

# **Why not Political Liberalism**

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## 論文梗概

這篇論文分為兩部份。首先，筆者會在第一章中簡單闡述約翰羅爾斯所提倡之政治自由主義的內容及其目的。跟着在第二章中，筆者會嘗試指出此自由主義的不足之處。事實上，筆者認為政治自由主義的中心觀念——合理交疊共識，難於在一多元化民主社會中建立。一方面，羅爾斯並不能成功地論證在該社會中的公民負有道德責任去接受他所建立的政治公正思想體系(即合理交疊共識的焦點)，而在另一方面，筆者亦不認為他能證明他們真的可以接受該思想體系。

筆者是基於幾個原因而相信在一多元民主社會中，並不是所有公民都能接受該思想體系。第一，如果羅爾斯所指出的判斷重擔真的是一民主社會中合理多元化現象的適當解釋，那麼即使政治公正思想體系真的如羅爾斯所言是獨立的，公民們都不能接納該思想體系。其次，筆者會嘗試證明政治公正思想體系並不獨立，這是因為它蘊含了一些整全性自由主義的元素，假若筆者的論點成立，則公民們便會因着判斷重擔的關係而不能普遍地肯定政治公正思想體系。最後，筆者將論證羅爾斯並不能合理地證明政治德性對其他非政治價值有着壓倒性的力量，因此之故，一個良好秩序社會對筆者而言，無論其可能性或穩定性都很成疑問。

如果筆者的想法正確，則政治自由主義的烏托邦(良好秩序社會)充其量只是一個不切實際的空想，也許，最後我們頂多只能建立一個奠基於妥協的社會而已。

# Abstract

This thesis consists of two parts. I will first explain briefly what Rawls' political liberalism is and why he advocates such a form of liberalism in (I). Then in (II), I will try to show that Rawls fails to set up his political liberalism since its main idea, namely, the reasonable overlapping consensus, is not realizable. On the one hand, Rawls is not convincing in imposing a moral responsibility on the citizens in a modern democratic society to endorse his political conception of justice (which is the focus of the reasonable overlapping consensus). On the other hand, he, in my opinion, fails to show that they can affirm such a conception unanimously.

Indeed, I think that if the appropriate explanations of the reasonable pluralism are really the burdens of judgment as suggested by Rawls himself, then it is impossible that all reasonable citizens can affirm the political conception of justice even though it is freestanding as he supposes it to be. Furthermore, I will try to show that the political conception of justice contains comprehensive liberal elements. If my argument is plausible, the political conception of justice is not freestanding at all. Accordingly, the citizens cannot affirm it unanimously due to the effect of the burdens of judgment. Finally, I will show that Rawls fails to establish the outweighing power of the political virtues and hence, I find neither the possibility nor the stability of a well-ordered society convincing.

If I am right, the utopia of the political liberalism, a well-ordered society (in which the reasonable overlapping consensus is realized), is a mere illusion. Eventually, the best we can achieve may be a *modus vivendi* only.



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# Introduction

A modern democratic society is characterized by an inevitable feature of pluralism. It is a plurality of different or even incompatible reasonable comprehensive doctrines. In such a society, citizens cannot reach a common agreement on a comprehensive doctrine without employing an oppressive state power.

Accordingly, it is difficult to achieve unity in a modern democratic society because no commonly agreed comprehensive doctrine can legitimately be adopted as the basis of the unity. However, for any society, there must be some kind of unity. Therefore, although it is difficult to find out a basis of the unity for a modern democratic society, this work seems to be indispensable for the ones who believe that such a society is worth supporting.

Rawls takes up this challenge in his second book, *Political Liberalism*.<sup>1</sup> In the book, he tries to answer the question, “[h]ow is it possible that there may exist over time a *stable* and *just* society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines” (*PL*, p. xxvii, emphasis added). If this question can be answered, the problem of social unity in a modern democratic society appears to be solvable too.

Rawls proceeds in two stages of exposition when answering this question. In the first stage, he presents his political conception of justice as a freestanding conception. This ensures that it is independent of any comprehensive doctrine and thus, compatible with different doctrines in a democratic society.

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<sup>1</sup> The abbreviations of John Rawls’ writings are as follows:

*ATOJ* – *A Theory of Justice* (Cambridge; Massachusetts: Harvard University Press, 1971).

*PL* – *Political Liberalism* (New York: Columbia University Press, 1996).

The hardcover edition of the second book was published in 1993. Since Rawls adds a new “introduction to the Paperback Edition” and “Reply to Habermas” in the paperback edition, *PL* in this thesis refers to the paperback edition.



In the second stage, Rawls argues that the citizens in a modern democratic society can affirm his political conception of justice unanimously through the reasonable overlapping consensus. This provides a stable basis for a well-ordered society because

[i]n such a consensus, the reasonable doctrines endorse the political conception, each from its own point of view. Social unity is based on a consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed by society's politically active citizens and the requirements of justice are not too much in conflict with citizens' essential interests as formed and encouraged by their social arrangements (*PL*, p. 134)

If the reasonable overlapping consensus is realized, the well-ordered society is just (since it is regulated by the political conception of justice) and stable (because of the reasonable overlapping consensus). It is not a *modus vivendi* in which the stability is sustained merely by the balance of power.

In such a society, even if the balance of power disappears, no one will force others to affirm his own comprehensive doctrine because all the citizens endorse the political conception of justice whole-heartedly (this is why Rawls thinks that it is stable for the right reasons). If this is true, the question mentioned above can be answered and the foundation of the social unity is secured because it is "based on a consensus on the political conception".

Actually, I believe Rawls is right in asserting the inevitability of the reasonable pluralism in a democratic society. I also admit that a secured basis of unity is indispensable for a democratic society. Nonetheless, I do not agree that his political conception of justice is an eligible candidate for such a basis. In other words, I doubt if his political conception of justice can fulfill the task set by himself. In this thesis, I will try to show why his work is unsuccessful.

This thesis is made up of two parts. In (I), I will try to display briefly what Rawls' political liberalism is and why he needs to recommend it. In (II), I would like to argue that the main idea in *PL*, that is, the reasonable overlapping consensus, is not realizable. Indeed, I think that Rawls is unreasonable and too optimistic in claiming that the overlapping consensus can be established in a modern democratic society. If I am correct, the best which can be achieved in such a society is a *modus vivendi*. The ambition of *PL* is only an illusion of a modern liberal.



# (I) John Rawls' Political Liberalism

## 1. *Why political liberalism?*

Why not *A Theory of Justice*? In fact, this is a misleading question. Rawls has never admitted that he wants to abandon the theory of justice advanced in *ATOJ*. Indeed, the two principles of justice are still adopted in his new book, *Political Liberalism*, though they should be understood in quite a different way.

Simply speaking, *PL* is a reformulation of *ATOJ*.<sup>2</sup> Thus, in order to understand it, we must first understand the inadequacy of *ATOJ*. In this section, I will try to explain why Rawls has to recast his theory.

### A. Reasonable Pluralism

The main problem of *ATOJ*, according to Rawls, is that it does not take the feature of a modern democratic society, namely, the reasonable pluralism, into account adequately. This is a feature which will not pass away in the foreseeable future. As he says:

A modern democratic society is characterized ... by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. (*PL*, p. xviii)

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<sup>2</sup> As he says, "a main aim of *PL* is to show that the idea of the well-ordered society in *Theory* may be reformulated so as to take account of the fact of reasonable pluralism" (*PL*, Italics added, p. xliii).

This passage tells us that in a modern democratic society where the citizens can freely exercise their reason, pluralism is unavoidable. It is a pluralism of reasonable comprehensive doctrines and can only be removed by the autocratic use of state power.<sup>3</sup>

For Rawls, reasonable pluralism is the main and permanent feature of a modern democratic society.<sup>4</sup> It is impossible that all (or most) of the citizens would affirm a comprehensive (or partially comprehensive) doctrine voluntarily in such a society. Although they may be coerced into affirming one comprehensive doctrine, this is not acceptable to Rawls because of his devotion to the liberal principle of legitimacy.<sup>5</sup> Furthermore, it is obvious that an acceptance made by force is not a real acceptance at all since if the force is removed, pluralism will surely occur again.

But why is reasonable pluralism inevitable? Why does political liberalism assume that, “for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the free institutions of a constitutional democratic regime” (PL, p. xviii)?

This should be explained by what Rawls calls “the burdens of judgment”, the sources of the reasonable disagreement. Briefly, they are:

- The difficulty to access and evaluate the complex and conflicting evidence bearing on the case.
- Disagreement on what the weight of different evidence should be.
- Our vague concepts leading to indeterminacy.
- The fact that our experience shapes the way we assess evidence and weigh values.

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<sup>3</sup> PL, pp. 303-304. Besides, the term ‘comprehensive’ has its special meaning in PL. If a conception covers all recognized virtues and values in one precisely articulated system, it is said to be fully comprehensive. If it contains only a number of loosely articulated nonpolitical values and virtues, it is called partially comprehensive. Please refer to PL, p. 13.

<sup>4</sup> PL, p. 136.

<sup>5</sup> The idea of ‘reasonable’ and the liberal principle of legitimacy are very important in political liberalism. I will discuss them in detail later.



- The difficulty in making an overall assessment due to different kinds of normative considerations of different force on both sides of an issue.
- Great difficulties in setting priorities and making adjustments in being forced to select among cherished values.<sup>6</sup>

These burdens explain why the common agreement of all citizens on one comprehensive doctrine is impossible even though they are making judgment rationally without appealing to self-interest or committing logical error. Because of them, the reasonable pluralism in a constitutional democratic regime is normal and inevitable.

If there is no comprehensive doctrine which can be affirmed by all in a democratic society, then the work of *ATOJ* must be reformulated. As Rawls admits:

[T]he serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I call a comprehensive philosophical doctrine ... I think, that the text regards justice as fairness and utilitarianism as comprehensive, or partially comprehensive, doctrines. (*PL*, p. xviii)

As shown in this passage, Rawls thinks that the text in *ATOJ* regards justice as fairness as comprehensive, or at least partially comprehensive. This is not acceptable because it does not work (at least in a right way)<sup>7</sup> in a democratic society. It has the same problem as Kant's or Mill's liberalism: since these doctrines are comprehensive, the voluntary affirmation of all citizens on any one of them is impossible (because of the burdens of judgment). The insistence on the possibility of the common affirmation not only is unrealistic but also is

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<sup>6</sup> For a full account of the burdens of judgment, please refer to *PL*, pp. 56-57.

<sup>7</sup> "in a right way" has a special meaning in *PL*. It is usually associated with the problem of stability. I will discuss it later.

unreasonable because it fails to recognize the pluralistic feature of a democratic society.<sup>8</sup> Thus, Rawls has to recast his doctrine in *ATOJ* in order to make his theory acceptable to all the reasonable citizens in a modern democratic society.<sup>9</sup>

## B. Stable for the Right Reasons

Because of the reasonable pluralism, Rawls has to solve the problem of stability in *ATOJ*. It is a serious problem when the theory is applied to a democratic society. This is why he says that the main concern of *PL* is to make the first and third part of *ATOJ* consistent:

Indeed, it may seem that the aim and content of these lectures mark a major change from those of *Theory*. ..., one must see them as arising from trying to resolve a serious problem internal to justice as fairness, namely from the fact that the account of stability in part III of *Theory* is not consistent with the view as a whole. (*PL*, pp. xvii-xviii)

Why does Rawls think that justice as fairness in *ATOJ* has an internal problem concerning stability? As I have mentioned, since it is a comprehensive doctrine, it cannot gain a public justification of the citizens in a pluralistic society. Owing to this, it is illegitimate to use such a doctrine in regulating a democratic society. Even if one can force others to affirm it, the resulting society will not be stable in a right way. It is a mere “*modus vivendi*”<sup>10</sup> only.

The term ‘stable’ is not as straight forward as it appears to be. Actually, “finding a stable conception is not simply a matter of avoiding futility” (*PL*, p. 142). Rawls wants the

<sup>8</sup> Rawls states explicitly in Lecture II of *PL* that a *reasonable* citizen should not force others to affirm their own comprehensive doctrine.

<sup>9</sup> One may ask why Rawls insists that his theory must be accepted by all in a democratic society. In fact, this insistence is also due to his devotion to the liberal principle of legitimacy. I will explain it in detail later. Roughly speaking, Rawls thinks that a society which is regulated by his political conception of justice is stable in a right way because such a conception can gain a public justification and thus, satisfy the requirement of the liberal principle of legitimacy.



society founded on justice as fairness be stable in a right way instead of a *modus vivendi* which may be stable but not for the right reasons. This is because a workable compromise between existing and known interests is not acceptable even though it may be stable.<sup>11</sup>

In order to make the society founded on his conception of justice stable in a right way, Rawls establishes a *political* conception of justice. In *PL*, he transforms the comprehensive theory of justice in *ATOTJ* into a political conception of justice because he thinks that though the citizens cannot affirm one of the comprehensive doctrines generally, they can affirm his political conception of justice instead.<sup>12</sup>

According to Rawls, the political conception of justice is “a moral conception and affirmed on moral ground” (*PL*, p. 147) which can be supported by the citizens in a democratic society who hold different (even incompatible) reasonable comprehensive doctrines. These citizens will not withdraw their support of it even if the relative strength of their view eventually becomes dominant.<sup>13</sup> If this is true, a well-ordered society (which is regulated by the political conception of justice) is not simply a *modus vivendi*.

If the political conception of justice can really gain support from the citizens in the way described by him, a *reasonable overlapping consensus* is said to be achieved.<sup>14</sup> And the focus of this consensus is exactly the political conception of justice. When this is done, the

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<sup>10</sup> For the meaning of “*modus vivendi*”, please refer to *PL*, p. 147.

<sup>11</sup> See John Rawls, “Domain of the Political and Overlapping Consensus”, reprinted in *The Idea of Democracy* (Cambridge; New York: Cambridge University Press, 1993), ed. David Copp, Jean Hampton, and John E. Roemer, p. 259. Because of this, I think that Kymlicka is wrong in claiming that Ottoman Turks (Muslim) system, which he calls “group-right model”, is an alternative type of religious toleration to that in the modern democratic society. This is because the religious toleration in the Muslim system is possible only when different groups are under the rule of the highest sovereign. It is the existence of Turks and the exercise of their political power that make the toleration possible. If that sovereign collapses, it is not clear whether the balance of different cultures in that system can be maintained. Please refer to Will Kymlicka, “Two Models of Pluralism and Tolerance”, in *Toleration* (Princeton; New Jersey: Princeton University Press, 1996), ed. David Heyd.

<sup>12</sup> Apart from this aim, there is another aim which *PL* wants to achieve. It is, to take the different “reasonable liberal political conceptions of justice” (*PL*, p. xlviii) into account. For Rawls, justice as fairness is not the only possible political conception of justice which can be applied in a democratic society. Some other liberal political conceptions can achieve this too. Thus, he has to consider them in *PL*. However, since my task in this thesis is mainly to examine Rawls’ political conception of justice. I will not take them up here.

<sup>13</sup> Please refer to *PL*, p. 148.

<sup>14</sup> The idea of the reasonable overlapping consensus is an extremely important idea in *PL*, I will discuss it in more detail later in this chapter.

society regulated by the political conception of justice is stable (in a right way) and just (endorse the political conception of justice).

Rawls' presentation in *PL* is divided into two stages. After showing the political conception of justice as a freestanding conception, he keeps on showing that the overlapping consensus can provide stability for a democratic society in a right way.<sup>15</sup> In the rest of this part, I will show what political liberalism is and how it fulfills Rawls' aim in the face of the reasonable pluralism in a democratic society.

## ***2. What is political liberalism?***

What is political liberalism? This is not a simple question. Rawls presents his theory in a very detailed and complicated way. In the following, I will only try to present the main ideas in *PL*.

### **A. The aim of *PL***

I have somehow touched the aim of *PL* above, now, I will discuss it in detail.

In the Introduction to the hard cover edition, Rawls claims that the problem of political liberalism is, "[h]ow is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines?" (*PL*, p. xxvii. I call this Q1).

One can see from this question that Rawls tries to find out a possible way which can make a pluralistic society founded on his theory to be stable and just. In order to fulfill this

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<sup>15</sup> I would like to quote here what Rawls thinks is *not* "political in the wrong way": "its form and content are not affected by the existing balance of political power between comprehensive doctrines. Nor do its principles strike a compromise between the more dominant ones." (*PL*, p. 142).



task, Rawls has to work out a *political* conception of justice because there is no comprehensive doctrine that can serve as a basis of public reason and justification. According to him, a just and stable society can only be regulated by a political conception of justice that all citizens might be reasonably expected to endorse.<sup>16</sup> Therefore, the central task of *PL* is to establish an appropriate political conception of justice which can be used to regulated a well-ordered society legitimately.

Rawls has explicitly divided Q1 into two questions so that he can answer it step by step. The first question is: “What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over complete life, from one generation to the next?” (*PL*, p. 3. Q1a) and the second one is: “What are the grounds of toleration so understood and given the fact of reasonable pluralism as the inevitable outcome of free and institutions?” (*PL*, p. 4. Q1b)

Obviously, the answer to Q1a and Q1b together constitute that to Q1. Rawls believes that Q1a can be answered by his political conception of justice while Q1b the reasonable overlapping consensus.<sup>17</sup>

With the purpose of answering Q1a and Q1b systematically, Rawls proceeds in two stages of exposition. First, he sets out “the first stage of the exposition of justice as fairness as a freestanding view” and it “gives the fair terms of cooperation among citizens and specify when a society’s basic institution are just” (corresponding to Q1a). Second, he “considers

<sup>16</sup> Please refer to *PL*, pp. 135-137.

<sup>17</sup> In the introduction to the paperback edition, Rawls puts Q1 in a more ambitious and vigorous way: “How is it possible for those affirming a religious doctrine that is based on religious authority, for example, the Church or the Bible, also to hold a reasonable political conception that supports a just democratic regime?” (*PL*, p. xxxix. Qrev1). Indeed, the change in the formulation of Q1 is to emphasize the concept ‘stable in a right way’. This is because the answer to Q1 can be an existing modern democratic society which is dominated by Kant’s or Mill’s Liberalism doctrines. And it is possible for such a society to exist over time. Nevertheless, this is not enough because it may at best be a *modus vivendi*. Rawls wants all reasonable citizens to accept his political conception of justice whole-heartedly. This is different from a mere compromise or a *modus vivendi*. He wants them to be able to hold both their own comprehensive doctrines and the political conception of justice *at the same time* without inconsistency.

how the well-ordered democratic society of justice as fairness may establish and preserve unity and stability given the reasonable pluralism characteristic of it" (*PL*, pp. 133-134. This is corresponding to Q1b). I will try to demonstrate briefly these two stages in the following.

## **B. Two stages of the exposition**

### ***a. The first stage of the exposition***

#### **i. The political conception of justice**

In order to understand the first stage of exposition, we should clarify what Rawls means by "the political conception of justice". In *PL*, he has given a clear description of it:

Political Liberalism characterizes a political conception of justice by three features:

- a. It applies in the first instance to the basic structure of society (assumed in the case of justice as fairness to be a democratic society). This structure consists of the main political, economic, and social institutions, and how they fit together as one unified system of social cooperation.
- b. It can be formulated independently of any particular comprehensive doctrine, religious, philosophical, or moral. While we suppose that it may be derived from, or supported by, or otherwise related to one or more comprehensive doctrines (indeed, we hope it can be thus related to many such doctrines), it is not presented as depending upon, or as presupposing, any such view.
- c. Its fundamental ideas – such ideas in political liberalism as those of political society as a fair system of social cooperation, of citizens as reasonable and rational, and free and equal – all belong to the category of the political and are familiar from the public political culture of a democratic society and its traditions of interpretation of the constitution and basic laws, as well as of its leading historical documents and widely known political writings. (*PL*, p. 376)



Feature a. tells us that the subject to which the political conception of justice is applied is the basic structure of society.<sup>18</sup> Feature b., on the other hand, demonstrates the difference between a comprehensive doctrine and the political conception of justice. The latter is indeed independent of any comprehensive doctrine though citizens may freely think that it is derived from, supported by, or related to their own comprehensive doctrines (this is why Rawls calls the political conception of justice freestanding). This feature is important because it ensures that the political conception of justice does not assert any specific comprehensive doctrine and so citizens in a modern democratic society can endorse it even though they hold different comprehensive doctrines.

Feature c. is essential for Rawls to claim that the political conception of justice is freestanding. It tells us that the fundamental ideas in this political conception belong to the political category and familiar to the political culture of a democratic society. In other words, these fundamental ideas are widely shared in a democratic society. This is necessary because in order to make a conception to be endorsed by all reasonable citizens, Rawls must start from some commonly shared ideas which are held by all. Otherwise, it is impossible to build up a conception which can answer Rawls' question because there is no guarantee that the citizens will accept it. If the conception of justice consists of the fundamental ideas prevailing in the democratic society, the ground of its acceptance can be much more secured.

Nevertheless, what are the fundamental prevailing ideas contained in Rawls' political conception of justice? For Rawls, there are two companion fundamental ideas in fact. "One is the idea of citizens as free and equal persons; the other is the idea of a well-ordered society as a society effectively regulated by a political conception of justice" (*PL*, p. 14). Hence, simply speaking, they are those *liberal ideas* of person and society.

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<sup>18</sup> I will not discuss the basic structure in detail here. One can refer to *PL*, Lecture VII.

Rawls believes that there is no need to affirm any comprehensive doctrine before accepting these ideas because they are independent of any comprehensive doctrine. This property is due to the fact that they are implicitly contained in the tradition and public political culture of a democratic society<sup>19</sup>. Moreover, because of them, other basic ideas<sup>20</sup> can be systematically connected in the political conception of justice.

Beginning with the fundamental idea of society as a fair system of cooperation, Rawls assumes that citizens have all the capacities that enable them to cooperate in a society. Then, he goes on to see what kind of principles can guarantee a society to be a fair system of cooperation. This is accomplished with the idea of the original position.

The idea of the original position is controversial since its first appearance in *ATOL*. Many think that it embodies a metaphysical conception of person.<sup>21</sup> However, Rawls denies this condemnation. He thinks that we should treat the original position only as a mode of representation which can provide us a way to find out what principles of justice should be chosen when we are in a fair system of cooperation.

In the original position, people are covered by the veil of ignorance. This eliminates the unfair bargaining power of some of the members. As Rawls says, "The reason the original position must abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principles of political justice between free and equal persons must eliminate the bargaining advantages that inevitably arise within the background institutions of any society from cumulative social, historical, and natural tendencies" (*PL*, p. 23). This ensures that the principles chosen by the parties are the ones which are not bias to any group or member and thus, they are appropriate *principles of justice*.

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<sup>19</sup> *PL*, p. 15.

<sup>20</sup> Rawls says, "[t]he basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgment, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal" (*PL*, p. 19).

<sup>21</sup> The representative of this kind of criticism is of course Michael J. Sandel, the writer of *Liberalism and the*



Rawls believes that the principles of justice obtained in the original position can best fit the implicitly shared idea of society as a fair terms of cooperation. Furthermore, if they pass the test of the reflective equilibrium<sup>22</sup>, then the political conception which is exemplified by these principles is the most reasonable political conception of justice for the citizens.<sup>23</sup> This, in addition to its freestanding property, makes itself suitable for being a focus of the reasonable overlapping consensus which I will discuss in the second part.

## ii. Political constructivism

Before considering the idea of the overlapping consensus, it is worth stating here that the specific view adopted by Rawls in his treatment of the political conception of justice is a constructivist view. It is a view about the content and structure of a political conception of justice.<sup>24</sup>

It is called constructivist because when the reflective equilibrium is satisfied, the principles of justice can be represented as the outcome of certain procedure which is modeled by the original position. In other words, they are *constructed by a certain procedure* which is acceptable to all the rational and reasonable citizens inside a democratic society.

Moreover, because of the specific feature of the original position, Rawls believes that “ [t]his procedure, we conjecture, embodies all the relevant requirements of practical reason and shows how the principles of justice follow from the principles of practical reason in union with conception of society and person, themselves ideas of practical reason” (*PL*, pp. 89-90).

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*Limit of Justice.*

<sup>22</sup> This means that they can “articulates our more firm considered convictions of political justice, at all levels of generality, after due examination, once all adjustments and revisions that seem compelling have been made” (*PL*, p. 28).

<sup>23</sup> *PL*, p. 28.

<sup>24</sup> *PL*, pp. 89-90.

Accordingly, he claims further that the constructivist view can provide political liberalism with an appropriate conception of objectivity.<sup>25</sup> And the political conception of justice constructed from such procedures can neither assert nor deny the truth of any comprehensive doctrine. This is necessary because given the fact of the reasonable pluralism, citizens cannot commonly agree on any comprehensive doctrine, moral values, or sacred text. We should thus adopt a constructivist view to specify the fair terms of social cooperation as given by the principles of justice.

In fact, the bases of this view lie in the fundamental ideas of the public political culture, citizens' shared principles and the conceptions of practical reason.<sup>26</sup> Rawls believes that if the procedure can be formulated correctly (through the original position), the citizens should be able to accept its principles and conceptions though they hold different comprehensive doctrines.

## ***b. The second stage of the exposition***

### **i. The reasonable overlapping consensus**

After showing the first stage of presentation in *PL*, it is time to enter the second stage and demonstrate its central idea: reasonable overlapping consensus. The second stage of Rawls' presentation of justice as fairness concerns the problem of stability. According to Rawls, stability involves two questions. The first one is, "whether people who grow up under just institutions acquire a normally sufficient sense of justice so that they generally comply with those institutions" (*PL*, p. 141). This is answered by what he calls moral psychology. I will not take this up here. The second question is that "whether in view of the general facts

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<sup>25</sup> *PL*, p. 89. The term 'objectivity' has its special meaning in *PL*. For detail, Please refer to Lecture III in *PL*.



that characterize a democracy's public political culture, and in particular the fact of pluralism, the political conception can be the focus of an overlapping consensus" (*PL*, p. 141). Rawls thinks that his political conception of justice can be such a focus and once the overlapping consensus is realized, the stability of the society is sustained. In this part, I will show in detail what Rawls means by reasonable overlapping consensus.

For all societies, there must be some kind of unity. However, in a modern democratic society which is pluralistic in nature, citizens hold different comprehensive doctrines (as well as conceptions of good). There is indeed no doctrine which can be the basis of the unity of such a society. In other words, no comprehensive doctrine or conception of good can be used to connect all citizens together.

In order to make a reasonable unity of the well-ordered society possible, Rawls tries to make his political conception of justice eligible for such a basis. In fact, he thinks that the reasonable basis of the social unity can be presented in three clear points:

- a. The basic structure of society is effectively regulated by one of a family of reasonable liberal conceptions of justice (or a mix thereof), which family includes the most reasonable conception.
- b. All reasonable comprehensive doctrines in society endorse some member of this family of reasonable conceptions, and citizens affirming these doctrines are in an enduring majority with respect to those rejecting each of that family.
- c. Public political discussion, when constitutional essentials and matters of basic justice are at stake, are always, or nearly always, reasonably decidable on the basis of reasons specified by one of a family of reasonable liberal conceptions of justice, one of which is for each citizen the most (more) reasonable. (*PL*, pp. xlix-l)

These points show that the social unity is not based on any comprehensive doctrine. Among these three points, the second one tells us what the real nature of the unity is. It is in

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<sup>26</sup> *PL*, pp. 89-90.

fact a unity based on the political conception of justice. This unity is possible because the majority will be connected by the political conception through their voluntary support for it. If this is realized, the political conception of justice makes the social unity possible even though the reasonable pluralism is inevitable.<sup>27</sup>

But how is such unity possible? According to Rawls, it is through the reasonable overlapping consensus. If the citizens in a democratic society hold different comprehensive doctrines on the one hand while whole-heartedly affirm the political conception on the other, the reasonable overlapping consensus is said to be realized and the unity in the above quoted passage is possible.

Rawls believes that the political conception of justice can be endorsed by different reasonable comprehensive doctrines from their own viewpoints. He illustrates this point with an example of three different views which would endorse the political conception of justice through the overlapping consensus.

The first view endorses the political conception because its religious comprehensive doctrine leads to the principle of toleration and accepts the fundamental liberties of a constitutional regime. The second view affirms the political conception on the basis of some comprehensive doctrines like those of Kant and Mill. The third one is a pluralistic view which is not systematically unified and includes a large family of nonpolitical values indeed.<sup>28</sup>

Rawls demonstrates the nature of the overlapping consensus by these three different views. Since they are quite popular in a democratic society, it appears that if they can affirm the political conception of justice from their own points of view, the overlapping consensus may be possible.

When the overlapping consensus is realized, these three views' endorsements are wholehearted and not merely a compromise. This is because they accept that the political

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<sup>27</sup> It should be noticed that a well-ordered society is not a 'political community' in which all citizens are



conception of justice is reasonable and they endorse it from their own view points. They will not withdraw their support for the political conception of justice even if the balance of the power among them disappears. Despite having power to enforce their own doctrines, they will not do so:

[T]hose who affirm the various views supporting the political conception will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant. So long as the three views are affirmed and not revised, the political conception will still be supported regardless of shifts in the distribution of political power...This feature of stability highlights a basic contrast between an overlapping consensus and a *modus vivendi*, the stability of which does depend on happenstance and a balance of relative forces. (*PL*, p. 148)

From this passage, one can also see why the stability is sustained when the overlapping consensus is realized. Indeed, the reason is simple: because all reasonable citizens will not withdraw their supports for the political conception of justice, the society will of course be stable. Although there may be some who refuse to endorse it, they are minority and cannot undermine the stability of a well-ordered society.

Furthermore, Rawls clearly points out the nature of the overlapping consensus, namely, the depth, the breadth and the specificity of content of the reasonable overlapping consensus. Regarding its depth, the overlapping consensus goes down to the fundamental liberal ideas of person as free and equal and society as a fair system of cooperation, within which justice as fairness is worked out. These ideas are prevailing in a democratic society. As for its breadth, it covers the content of the political conception (justice as fairness) and it

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connected by comprehensive doctrine or conception of good. Please refer to *PL*, pp. 40-41.

<sup>28</sup> Please refer to *PL*, p. 145.

applies to the basic structure of a society.<sup>29</sup> Its specificity simply refers to justice as fairness (the political one).<sup>30</sup>

However, one may ask why “those who affirm the various views supporting the political conception will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant”? Obviously, it is not enough to optimistically say that they will not do so when the overlapping consensus is realized. In order to be convincing, Rawls must handle the problem of conflicts between the political conception of justice and the comprehensive doctrines.

The answer can be seen from a passage in *PL*. Since this is very important, I think it is better to quote it here despite its considerable length:

The virtues of political cooperation that make a constitutional regime possible are, then, very great virtues. I mean, for example, the virtues of tolerance and being ready to meet others halfway, and the virtues of reasonableness and the sense of fairness. When these virtues are widespread in society and sustain its political conception of justice, they constitute a very great public good, part of society’s political capital. Thus, the values that conflict with the political conception of justice and its sustaining virtues may be normally outweighed because they come into conflict with the very conditions that make fair social cooperation possible on a footing of mutual respect...The other reason political values normally win out is that severe conflicts with other values are much reduced. This is because when an overlapping consensus supports the political conception, this conception is not viewed as incompatible with basic religious, philosophical, and moral values. We need not consider the claims of political justice against the claims of this or that comprehensive view; nor need we say that political values are intrinsically more important than other values and that is why the latter are overridden. Having to say that is just what we hope to avoid, and achieving an overlapping consensus enable us to do so. (*PL*, p. 157)

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<sup>29</sup> *ATOJ*, p. 149.

<sup>30</sup> *PL*, p. 164.



This important passage gives us two reasons which can sustain the stability of a well-ordered society even though there are conflicts between the political conception of justice and some non-political values. Firstly, since the virtues of political cooperation are great virtues (great in the sense that they are the very conditions that make fair social cooperation possible), the non-political values which conflict with the political conception of justice they sustain may be normally outweighed. Secondly, when an overlapping consensus is achieved, the political conception of justice is viewed as compatible with the basic religious, philosophical, and moral values by the citizens. Thus, the conflicts between them can be to a great extent avoided and the society will be stable.

From the above discussion, we can see that if Rawls is right in arguing for the possibility and the stability of the reasonable overlapping consensus, Q1 will be answered because such a consensus provides a way which ensures the existence of a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines.

## **ii. Public reason**

If the overlapping consensus is realized, the basis of public reason is said to be secured as well and the conflict can be solved by negotiation. This is because “fundamental political questions can be settled by the appeal to political values expressed by the political conception endorsed by the overlapping consensus” (*PL*, p. 169).

In such a society, the citizens appeal to the public reason instead of the non-public ones when settling basic political questions. The content of the public reason is formulated by a political conception of justice which is broadly liberal in character and independent of any comprehensive doctrine:

The aim of justice as fairness, then, is practical: it presents itself as a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement. *It expressed their shared and public political reason.* But to attain such a shared reason, the conception of justice should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm. (*PL*, p. 9. Italics added)

This political conception of justice, served as the focus of the overlapping consensus, is used in determining the acceptable agreement on political issues. As Rawls explicitly claims that a political conception is a guiding framework of reflection and deliberation which helps us reach political agreement on the basic questions of justice and the constitutional essentials.<sup>31</sup> In other words, the political conception of justice provides publicly justified resources for all in a democratic society to settle the basic questions of justice and the constitutional essential. This is why Rawls thinks that the reasonable overlapping consensus which focuses on the political conception of justice can provide a firm foundation for the public reason. Actually, if there are no commonly shared resources, conflicts cannot be resolved peacefully and legitimately.

### C. Liberal Principle of Legitimacy

After the demonstration of Rawls' two stages of the exposition, I think it is worth considering briefly another main idea of Rawls in *PL*, namely the liberal principle of legitimacy. As I have said above, for Rawls, a society is stable in a right way only when it satisfies the liberal principle of legitimacy. This tells us how important this principle is.

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<sup>31</sup> Please refer to *PL*, p. 156.



In order to understand this principle, we should at first know what “political relationship” is in a modern democratic society because the principle of legitimacy is connected with these two features:

First, it is a relationship of persons within the basic structure of the society into which they are born and in which they normally lead a complete life.

Second, in a democracy political power, which is always coercive power, is the power of the public, this is, of free and equal citizens as a collective body. (*PL*, p. 216)

The second point shows that in a democratic society, the political power is the coercive power of all equal citizens as a collective body. This, in addition to the fact of reasonable pluralism, makes it unreasonable to exercise the state power to coerce others to do something that we ourselves cannot reasonably accept.

The liberal principle of legitimacy is the principle which expresses this view. As Rawls claims, “Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy” (*PL*, p. 217).

Thus, for Rawls, when the government of a democratic society wants to exercise the coercive state power on the citizens, it must use the power in a way which satisfies the principle of legitimacy. Otherwise, it is illegitimate and unacceptable.

Here, one should bear in mind that Rawls has given no argument to support the reasonableness of the liberal principle of legitimacy. Its reasonableness arises from the reasonableness of the idea of person. As he himself claims, “I note that there is, strictly speaking, no argument here. The preceding paragraph in the text simply describes an institutional context in which citizens stand in certain relations and consider certain questions, and so on. It is then said that from that context a duty arises on those citizens to follow the

criterion of reciprocity. *This is a duty arising from the idea of reasonableness of persons* as characterized at p. 49f” (PL, p. xlvi, f.n. 14. Italics added).<sup>32</sup>

The liberal principle of legitimacy is indeed extremely important in Rawls’ political liberalism since his devotion to it leads him to revise the doctrine in *ATOJ* in order to suit the modern democratic society. It constitutes the liberal ideas of person and society. And this is why it tells us that it is illegitimate to use state power in forcing others to affirm any comprehensive doctrine. If we view society as a cooperative structure between equal and free citizens, then when we need to settle political questions, we must appeal to the freestanding political conception of justice which can be reasonably endorsed by all instead of a comprehensive doctrine.

The above is a brief account of what Rawls’ political liberalism is. I hope one can get the general picture of political liberalism now. In (II), I will discuss whether his political liberalism succeeds or not.

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<sup>32</sup> In this passage, the “criterion of reciprocity” refers to the liberal principle of legitimacy itself. Rawls explicitly tells us that the reasonableness of this principle is founded on the reasonableness of the liberal idea of person which is one of the fundamental ideas in the political conception of justice. Nonetheless, I think that the “idea of reasonableness of persons” leads to difficult problems for *PL* which are not easy to solve. I will discuss this in (II) too.



## (II) Why not Political Liberalism

In this chapter, my main concern is to show Rawls is not convincing in arguing that the reasonable overlapping consensus can be realized in a modern democratic society, which is pluralistic in nature. Indeed, I believe that his well-ordered society is at best a *modus vivendi* since he fails to include those non-liberal doctrines in such a society.

If I understand Rawls correctly, his political liberalism is unsuccessful in fulfilling the task set by itself because it fails to provide a realistic way for a pluralistic society to be just and stable in a right way.<sup>33</sup>

### *1. The reasonable overlapping consensus?*

As I have shown in (I), Rawls gives us an example of the reasonable overlapping consensus containing three different views. They are willing to endorse the political conception of justice because they affirm one of the following doctrines:

- Comprehensive liberal moral doctrine such as those of Kant or Mill
- Religious doctrine which accepts the principle of toleration and the idea of fundamental liberties
- A pluralist view in which different values are not systematically unified<sup>34</sup>

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<sup>33</sup> It fails to answer both Q1 and Qrev1 which I have mentioned in (I).

<sup>34</sup> *PL*, p. 145.

Rawls believes that all these three views can “overlap on the political conception” (PL, p. 146) and he tries to reply the objections to the overlapping consensus after giving us this example.

Similar to Rawls, I believe that these three views can form an overlapping consensus focusing on the political conception of justice. However, one should ask what the significance of this consensus is. Does this mean that other doctrines in a democratic society can join the overlapping consensus as well?

Let us take a look on these three views. For the first one, its affirmation of the political conception of justice is due to its liberal nature. Although their scopes are different (one is comprehensive while the other is political), it is easy to predict that it can abide by the two principles of justice (which are the content of the political conception of justice) in the political aspect. Moreover, because of its assertion of the priority of right, it will not force others to affirm its own conception of good even in the non-political aspects.

The religious doctrine held by the second view is similar to some kinds of religion like today's Christianity in the United States. It endorses the principle of toleration and accepts citizens to share fundamental liberties no matter what social status or religion they have. It is also easy to imagine that this view will affirm Rawls' political conception of justice since it has been somehow liberalized.<sup>35</sup> As Rawls tells us, toleration comes out as a long term practice after the war of religion. In order to survive in a democratic society, these religions have to accept the fundamental liberal ideas (like those of person and society) though they might not endorse them wholeheartedly at the very beginning.

Finally, the third view which holds partially comprehensive doctrine is quite interesting. I believe that this view is popular in a democratic society. Owing to the pluralistic nature of a democratic society, no absolute moral or religious authority can be

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<sup>35</sup> One may doubt its affirmation is just a compromise or more vigorously, whether this view really holds its



accepted by all. Many people choose to endorse particular values (instead of a whole comprehensive doctrine) which they prefer to or are familiar with. Since these values come from different comprehensive doctrines in a modern democratic society, this view is pluralist in nature.

Nevertheless, no matter how pluralist this view is, once it does not affirm any one of the comprehensive doctrines, it may not resist accepting the political conception of justice. Remember, the political conception of justice contains the fundamental liberal ideas which are *widely shared* in a democratic society. When one grows up in such a society, he may not find it difficult to accept these ideas. Even a clever man like Aristotle does not think that slavery is morally wrong.

Therefore, if the overlapping consensus only needs to contain these three views, I believe Rawls is successful in showing that it is realistic. Nonetheless, this does not mean the same consensus can be successfully established in today's democratic society. Indeed, the aim of a well-ordered society is to contain most of the doctrines (even if they are unreasonable) in a democratic society which may not be so liberal at all.<sup>36</sup> This is equal to saying that *Rawls wants the citizens in a democratic society, who hold different or even incompatible comprehensive doctrines and conceptions of good, to affirm liberal's priority of right in the political aspect and put their non-political values in the bracket when considering political questions.*

Accordingly, it is not enough for Rawls to give such an example. Indeed, if his example contains some extreme views like those of Islam, I doubt very much that the overlapping consensus can successfully be demonstrated. As Bernard Williams says, "Rawls'

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religious doctrine. I will discuss this details later.

<sup>36</sup> As Rawls says, "a society may contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to *contain* them so that they do not undermine the unity and justice of society." (*PL*, pp. xviii-xix, italics added).

state has no way of including militant Hinduism or Islam, for instance, or the most fanatical variants of Orthodox Judaism, and no doubt it is not sensible to expect that it should”.<sup>37</sup>

Of course, when confronting such extreme cases, Rawls will not try to include them, he will just simply count them as unreasonable and exclude them from his well-ordered society. But here, one can see that Rawls’ standpoint in *PL* is quite confusing in treating those extreme doctrines.

As I quoted in footnote 36, Rawls wants to contain most of the doctrines even though some of them are unreasonable or mad. Nevertheless, as Williams says, Rawls’ state has no way to include those unreasonable doctrines indeed. Rawls himself has also explicitly said that the doctrines which do not accept the fundamental liberal ideas of person and society in his political conception of justice are unreasonable, and it seems that he does not allow them to be included in his well-ordered society.

In fact, Susan Moller Okin is right in pointing out this puzzling view, “[e]arly in this book (*PL*), he several times says that while there are many reasonable comprehensive doctrines, there will always be some unreasonable ones, which need to be ‘contained’. Subsequently, however, he argues that only reasonable ones will be ‘allowed’ or ‘permitted’. His example of those that may be discouraged or even excluded altogether include doctrines and associated ways of life ‘in direct conflict with the principles of justice’”.<sup>38</sup>

If this is so, in what way should we understand Rawls? In my opinion, it is appropriate for us to accept that Rawls does not want to include those extreme religions like militant Islam in his well-ordered society. In fact, Rawls has explicitly said that “a conception of the good requiring the repression or degradation of certain persons on, say, racial, or ethnic, or perfectionist grounds...This religion will *cease to exist* in the well-ordered society of political liberalism” (*PL*, pp. 196-197, italics added). Thus, they are

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<sup>37</sup> Bernard Williams, “A Fair State”, in *London Review of Books*, Vol. 15, (13<sup>th</sup>, May, 1993).



obviously not able to survive in a well-ordered society because they are 'unreasonable' in Rawls' sense.<sup>39</sup> Although Rawls has used the term 'contain' (the italics in footnote 36, it should be understood as "keep under proper control") when he talks about the 'unreasonable' doctrines, it is obvious that they will undoubtedly be excluded from his well-ordered society if they cannot be effectively controlled.

However, even if we accept that Rawls is reasonable in excluding those extreme religions or comprehensive doctrines, there may still be many moderate doctrines which do not accept liberal conception of right in a democratic society. If Rawls only gives an example which contains one liberal and two 'semi-liberal' views, it is impossible for him to persuade others to accept that the overlapping consensus is possible.

As I have demonstrated in (I), he has shown why the overlapping consensus is possible in *PL* apart from using an example alone. But I find most of them unconvincing. Indeed, I believe that his idea of the overlapping consensus is too optimistic if not impossible. In the following, I will concentrate on showing why his arguments are not successful.

## ***2. Why should the citizens endorse the political conception of justice?***

After reading *PL*, the first question appearing in my mind is: if the reasonable pluralism is really inevitable in a democratic society (except by using force), why *can* the citizens affirm the political conception of justice voluntarily while the burdens of judgment still exist? Does Rawls successfully argue for this?

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<sup>38</sup> Susan Moller Okin, "Review of Political Liberalism", in *American Political Science Review*, Vol. 87, pp. 1010-1011.

<sup>39</sup> I believe Rawls' use of this term 'unreasonable' leads to serious problem of his theory which I will discuss in the following.

Easy to observe, this is a practical question ('practical' in the sense that whether such affirmation *can be realized* is Rawls' main concern). However, before coming into a detailed discussion of it, we should at first clarify why Rawls thinks that the citizens *should* endorse such a political conception of justice. Although the questions of 'should' and 'can' are intimately connected, it is possible for us to discuss them separately so as to make the problems internal to his view explicit.

### A. Being reasonable?

Why should the citizens endorse the political conception of justice? For Rawls, the main reason is that its fundamental ideas (those liberal ideas of society and person) are widely shared in a democratic society. He seems to suppose that if this is the case, the citizens should endorse the political conception of justice as well.

But why is this so? If the prevailing ideas in a society should be accepted by its people, then, should the people in Greece accept slavery?<sup>40</sup> This is of course not what Rawls wants to handle since his focus is a modern democratic society only. However, if he really thinks that the prevailing ideas in a democratic society should be accepted by its citizens, he must at least show the reasons and clarify why this may not be the case in other societies. Surprisingly, he just simply takes it for granted that it is *reasonable* for the citizens to accept these prevailing liberal ideas. Nevertheless, I think his use of the term 'reasonable' is not reasonable at all.

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<sup>40</sup> This involves the problem of relativism which I cannot afford to take up in detail in this thesis. But I would like to quote here that there are some objections to Rawls on this issue. As Galston says, "When Americans say that all human beings are created equal and endowed with certain unalienable rights, we intend this not as a description of our local convictions but, rather, as universal truths, valid everywhere and binding on all. Indeed, that claim is at the heart of their normative force. If our principles are valid for us only because we (happen to) believe them, then they are not binding even for us." Galston, W., "Pluralism and Social Unity", in *Ethics*, vol. 99 (July 1989), p. 725.



In spite of the complicated structure of *PL*, the idea why the citizens should affirm the political conception of justice is quite simple. Let's recall the three features of the political conception of justice. The first feature is that the subject to which it applies is the basic structure of a society. The second feature is that it can be formulated independently of any comprehensive doctrine. Finally, the fundamental ideas in this conception belong to the category of politics and are familiar with the political culture, the tradition of a democratic society.

Within these features, the third one is the key point why the citizens can accept such political conception even though they hold different comprehensive doctrines. It provides a basis of public justification for a political conception of justice<sup>41</sup>. Rawls thinks that if the fundamental ideas in the political conception of justice can be publicly justified, the conception itself can be endorsed by the citizens too.

Nonetheless, although these ideas are prevailing in a democratic society, obviously there are still some citizens not accepting them. As I have quoted from Bernard Williams, there may be some "militant Hinduism or Islam" who cannot be contained in a well-ordered society due to their own comprehensive doctrines. In order to handle these kinds of people, Rawls describes them with the term 'unreasonable' or even 'mad'.

In fact, he thinks that it is reasonable for the citizens to accept the fundamental liberal ideas in his political conception of justice. As he says:

Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose. *The reasonable is an element of the idea of society as a system of fair cooperation and that its fair terms be reasonable for*

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<sup>41</sup> For why Rawls wants the political conception of justice be publicly justified, please refer to (I).

*all to accept is part of its idea of reciprocity...* Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others. (PL, pp. 49-50, emphasis added)

From these, one can see a reasonable person in Rawls' sense is the one who is willing to accept the ideas of person as free and equal and society as a fair system of cooperation. According to him, to say that citizens are reasonable is briefly equal to saying that:

- They are ready to propose fair terms of cooperation and to abide by these terms provided others do so.
- They recognize the limit brought by the burdens of judgment. That is, their own view may not be justified to others who are also reasonable and rational.<sup>42</sup>

The first point tells us that recognizing the idea of society as fair terms of cooperation is not enough. One must be willing to abide by these terms provided others will do so. The second point leads to the result that one should treat toleration as a political virtue. If one accepts that people are equal and free and acknowledge the burdens of judgment, then it is reasonable for him to tolerate other citizens whose comprehensive doctrines are incompatible with his. This point is extremely important because if all citizens are really 'reasonable', the stability of a pluralistic democratic society can be sustained.

It is easy to observe that according to Rawls, being reasonable is a moral idea. One should not be unreasonable because it is morally wrong. As one of the conditions of being reasonable is to accept the liberal ideas of person and society, one should endorse the

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<sup>42</sup> These 2 features of being reasonable are just part of the idea of reasonable. The idea is fully discussed in detail in the Lecture II of PL. Here, I just briefly elaborate these 2 points.



political conception of justice because it is morally right to accept its fundamental liberal ideas.

However, is it really reasonable to simply categorize those who do not accept the fundamental liberal ideas as 'unreasonable'? Rawls simply grants the meaning of the term 'reasonable' at the outset. And he raises no independent argument to support the moral responsibility in accepting these ideas. Quite obviously, his argument is circular. As Stephen Mulhall and Adam Swift say:

In short, this seemingly separate argument adds no independent weight to Rawls' earlier claims about the very great value of the political virtues...it is entirely circular. By defining 'the reasonable' as including a commitment to a politically liberal vision of society, Rawls defines anyone who queries or rejects that vision as 'unreasonable'; but he offers no independent reason for accepting that morally driven and question-begging definition.<sup>43</sup>

Apart from the meaning of the term 'reasonable', it appears that there is no independent argument in *PL* to support the reasonableness in accepting these fundamental ideas.<sup>44</sup> If this is true, it is really unreasonable and inadequate for Rawls to impose a moral responsibility on the citizens to endorse his political conception of justice.

Besides, Rawls' idea of 'reasonable' leads to another serious problem. As Mulhall and Swift have mentioned, his definition on 'reasonable' and his desire to seek the public justification may not be compatible.<sup>45</sup> On the one hand, he thinks that it is reasonable to accept the fundamental liberal ideas in his political conception of justice; on the other, he wants to make his political conception of justice publicly justifiable. However, if his definition of the term 'reasonable' is sound, there is no need for him to seek the public

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<sup>43</sup> Stephen Mulhall & Adam Swift, *Liberals & Communitarians*, 2nd edition (Blackwell, 1992), p. 238.

<sup>44</sup> Perhaps Rawls simply thinks that the popularity of the fundamental ideas alone is enough for supporting their reasonableness. However, even if this is sound, there are still problems needed to be solved. I will take this up

justification. This is because if the political conception of justice cannot be justified to someone, then he will be counted as unreasonable. And there is no need to seek his endorsement on the political conception of justice at all.

If this is so, the work of *PL* seems to be superfluous. Remember, its main aim is to modify the theory in *ATOTJ* in order to seek the public justification. If there is no need to seek the justification from the ones who do not endorse the political conception of justice (because they are unreasonable), why should Rawls put so much effort to argue that his political conception of justice can be the focus of the overlapping consensus? He just needs to exclude the 'unreasonable' people from his fair state, and the remaining ones will of course be willing to endorse his political conception of justice because they are 'reasonable'.

Moreover, it is worth asking further that if the idea of 'reasonable' and the need of the public justification are in conflict, which one is more important. Actually, Rawls' idea of "reasonable in accepting the fundamental liberal ideas" seems to depend on the popularity of these ideas. However, imagine one day, when it is discovered that the public does not accept the reasonableness in acknowledging these ideas, how will Rawls respond? Should he abandon his moral idea of 'reasonableness' or should he claim that the public is not reasonable and thus, morally wrong in insisting their view (and abandoning the search of the public justification for his political conception of justice)?

This problem arises because of Rawls' devotion to both of the ideas at the same time. On the one hand, he has given us his devoted moral idea of reasonableness at the outset. On the other hand, he wants his theory to be publicly justified in a democratic society (due to his dedication to the liberal principle of legitimacy). But the problem is, what he treats as moral may not be publicly justifiable. This tells us that the relationship between morality and public justification is not so harmonious. There may be an unavoidable tension between them.



In *PL*, Rawls seems to neglect this unavoidable tension between morality and public justification. This is because he optimistically thinks that the political conception of justice (which is a moral conception) can be publicly justified in a democratic society. Thus, it can satisfy both ideas at the same time. Those who do not endorse it are simply unreasonable. Hence, there is no need for him to resolve the tension because there is no tension at all.

But, as I have shown, the fact is that neither can Rawls argue for his idea of reasonableness successfully (circular argument) nor can the fundamental ideas in the political conception of justice win public justification (sure there are some religious doctrines which do not accept these ideas). As a result, the work of *PL* obviously fails because the fulfillment of both ideas are the necessary conditions for it to be completed and unluckily, Rawls has satisfied none of them.

Frankly speaking, I believe that it is quite impossible for one to establish a moral conception which can be endorsed by all in a pluralistic society (even though its scope is political only). One may think what is morally right can be publicly justified simply through open discussion. But this is surely not always true especially in a democratic society. In such a society, there are many different answers to the question of what morality is because there are different conceptions of good.<sup>45</sup> An action which is thought to be morally right by, says, an Utilitarian may not be justified to a Christian. This feature is caused exactly by the burdens of judgment which are suggested by Rawls himself.

## B. Prevailing ideas?

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<sup>45</sup> *Liberals & Communitarians*, pp. 242-245.

<sup>46</sup> I believe that there is a close relationship between moral rules and conception of good. Liberalism fails to respect this relationship and treats the conception of right and good separately. This is unacceptable and unreasonable. I will discuss it later.

As I have demonstrated, Rawls argues for the reasonableness of his political conception of justice in the following way: since the fundamental ideas are widely shared in a democratic society, the citizens should endorse the political conception of justice which is built upon them. This is simply because it is *reasonable* for the citizens to do so.

Hence, if his use of the term 'reasonable' is really unreasonable, he fails to convince us that the citizens should endorse his political conception of justice. Nevertheless, granted that he can successfully argue for the reasonableness in accepting these prevailing fundamental ideas based on the fact that they are prevailing, there is still a problem.

As one can easily observe, in a democratic society, the political culture is constituted of many ideas. Among them, there are many conflicts which cannot be solved peacefully. For instance, there may be some ideas of utilitarianism or religion prevailing in the democratic political culture which are not compatible with Rawls' liberal ideas of person and society. Why should one accept his ideas but not the others? As Dworkin says:

No set of political principles constructed by a philosopher can fit all parts of any community's traditions and history perfectly because, as Rawls of course acknowledge, the history of any community includes controversy as well as tradition. Two very different political conceptions, which would justify very different controversial political decisions now, might each fit the record and rhetoric of a community's political history roughly equally well.<sup>47</sup>

If there are really many conflicting ideas in the democratic tradition, then which set of ideas should be accepted by the citizens? Which set is more reasonable if they are conflicting? If one endorses some prevailing ideas which are incompatible with the fundamental ideas in Rawls' political conception of justice, how can Rawls convince him to endorse the political conception of justice provided that the burdens of judgment exist?

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<sup>47</sup> Ronald Dworkin, *Foundations of Liberal Equality* (Salt Lake City: University of Utah Press, 1990), p. 32.



Rawls also seems to put inadequate effort in showing that his fundamental ideas are the most reasonable ones for the citizens to endorse.

He may reply that one should accept the fundamental ideas because they best fit our moral convictions (remember the reflective equilibrium). Nevertheless, to be honest, there may also be many prevailing ideas which can fit our moral convictions very well.

For instance, I might believe that it is natural for some to be very rich in a capitalistic society just because they are smart. This is a fair game. If one is smart, he will win in such a game. Why should I accept the difference principle? In fact, the famous Chamberlain's example given by Robert Nozick tells us that it seems to be quite unreasonable for the Government to redistribute our properties.<sup>48</sup> It also contains intuition held by many citizens that is to a certain extent incompatible with Rawls' principles of justice. Thus, it is obviously not enough for Rawls to simply claim that the citizens should accept his ideas instead of others because of their moral convictions.

Furthermore, in Dworkin's passage quoted above, he is concerned with the conflicts between different political conceptions of justice. He thinks that different political conceptions may justify different political decisions or fit roughly equally well into community's political history. If this is so, regarding the difficult political questions, what decisions should the citizens support if they endorse different political conceptions of justice?

Actually, the decisions based on one's political conception of justice may be unable to be publicly justified. Eventually, no political conception of justice can provide resources in settling thorny political questions in a way which is acceptable to all. This means that even a well-ordered society may not be stable in a right way.

Rawls of course knows this very well, he tries to respond in this way:

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<sup>48</sup> Please refer to Robert Nozick, *Anarchy, State and Utopia* (Blackwell, 1974), pp. 161-163.

However, disputed questions, such as that of abortion, may lead to a stand-off between different political conceptions, and citizens must simply vote on the question. Indeed, this is the normal case: unanimity of views is not to be expected. Reasonable political conceptions of justice do not always lead to the same conclusion, nor do citizens holding the same conception always agree on particular issues. Yet the outcome of the vote is to be seen as reasonable provided all citizens of a reasonably just constitutional regime sincerely vote in accordance with the idea of public reason. (*PL*, pp. lv-lvi)

However, can this solve the problem? Rawls' suggestion of voting leads to several problems.

First, in this passage, Rawls says that citizens should "sincerely vote in accordance with the idea of public reason" (as I have mentioned in (I), the content of public reason is the political conception of justice). But there are some problems such as abortion (Rawls' passage which I quoted above concerns exactly this problem) which may not be able to be solved by the political conception of justice alone.<sup>49</sup> In such cases, citizens can only sincerely vote in accordance with their own comprehensive doctrines because no political conception of justice can help in the deeply controversial questions. If this is really the case, why should one accept the result of voting as reasonable if the majority's view is incompatible with the comprehensive doctrines they hold?

Second, should one accept the voting as a suitable method to solve the problem if he sincerely believes that his view is right? If one believes that abortion is evil, why should he tolerate it even though the result of the voting tells him that the majority accepts it?<sup>50</sup> Does one really have a moral responsibility in accepting the majority's view? Indeed, I doubt that

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<sup>49</sup> Whether abortion is permissible is one of the most controversial political questions in the United States. In fact, in order to solve this problem reasonably, comprehensive doctrines appears to be unavoidable. As Galston tells us, when we consider abortion, fundamental disagreement usually occurs on whether a fetus should be counted as a moral person. This always is a philosophical question. Therefore, when deciding whether abortion is permissible, "the state must incline toward one or the other metaphysical view" (Please refer to William Galston, "Pluralism and Social Unity", in *Ethics*, vol. 99 (July, 1989), p. 721). If this is true, Rawls' political conception of justice (as well as other political conception of justice) seems to provide no reasonable way for the citizens to solve the problem. This is why Rawls only advocates voting as the method (practical) in settling such difficult issues. Nevertheless, this will lead to other problems.



the idea of voting involves some kind of comprehensive conviction of liberalism. If this is true, one will not abide by the result if his doctrine does not have this liberal element. This is the case just because of the burdens of judgment.

Finally, there may be the problem of “the tyranny of the majority”.<sup>51</sup> In Rawls’ well-ordered society, when severe disagreement occurs on the thorny political questions (like that of abortion), it seems there is no guarantee that the minority’s view will be respected. This is unacceptable. As Mill says:

There needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. This is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism.<sup>52</sup>

As Mill points out, no matter how prevailing the ideas or opinions are (including the fundamental ideas in the Rawls’ political conception of justice), one should not be coerced by others into accepting them. Thus, even if the result of the voting tells one that the majority in a democratic society accepts abortion as permissible, he can and should still refuse to accept it if he sincerely believes that it is morally wrong. The majority seem to have no right to coerce him into tolerating some things which he regards as evil.

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<sup>50</sup> I will show later that it may not be reasonable to tolerate.

<sup>51</sup> For the discussion of the tyranny of the majority, please refer to John Stuart Mill, *On Liberty and other writings* (Cambridge University Press, 1989), chapter 1.

<sup>52</sup> *Ibid*, pp. 8-9.

In one word, the problem remains unsolved. That is, in a modern democratic society, we do not know how to resolve disagreements *in a right way* because the method given by Rawls is unacceptable. It may at best be a *practical* method. As Dworkin points out:

This picture of a contest and ultimate victory is drawn with consensual promise in mind; it is offered as an account of how society would decide between two conceptions of roughly equal antecedent consensual promise. *It has nothing to do with categorical force*, however, it offers no advice to a senator or citizen forced to choose between competitive conceptions that fit rhetoric and tradition roughly equally well.<sup>53</sup>

This tells us that if the citizens adopt voting as a method to solve great disagreements, it may at best be a compromise. They abide by the result of the voting just because they have no other choice (suppose they do not want to appeal to violence). It is practical but may not be moral. They accept it not because their public reason tells them to do so (when they are holding different comprehensive doctrines which are conflicting with the political conception of justice). Instead, they must accept it on practical considerations because they do not know how to settle thorny political questions in a right way. It is a mere compromise indeed.

To sum up, it is unclear why the citizens should endorse Rawls' political conception of justice instead of others. It is also difficult to find a reasonable way to settle controversial political questions. The fact is, no prevailing ideas in a democratic society (including the fundamental ideas inside Rawls' political conception of justice) can force the citizens to accept simply by the popularity alone. That one accepts Rawls' political conception of justice may be just because one contingently believes its fundamental ideas are the most reasonable ones. However, if this is true, whether one accepts it is quite arbitrary and this in turn undermines the reasonableness of his political conception of justice (or other political conceptions) very much.



### 3. *Why can the citizens endorse the political conception of justice?*

I have shown that Rawls is not convincing in arguing for the reasonableness in accepting his political conception of justice. In this part, I will try to show further this point: it is not true that all reasonable citizens can affirm such a political conception.

I believe so because of several reasons. First of all, if we accept the burdens of judgment as the suitable explanation of the reasonable pluralism, I cannot see why we would be convinced to believe that all reasonable citizens can affirm the conception of justice even though it is political. Secondly, I believe that Rawls' political conception of justice involves comprehensive liberal elements. Thus, if Rawls is correct in asserting the effect of the burdens of judgment, then, just like any other comprehensive doctrines, the citizens cannot endorse his political conception of justice unanimously.

Finally, owing to three reasons, I think that one is unable to respect the political virtues in the way described by Rawls. Firstly, I believe that an internal inconsistency needs to be solved if Rawls insists that the citizens must respect the political virtues in the political aspect. Secondly, it is impossible for one to affirm the priority of right in the political aspect regardless of what conception of good one holds. The third reason is that Rawls' demand may only lead to the result of schizophrenia.

Furthermore, I will concentrate on one of the political virtues, namely, the virtue of toleration. I want to show that it may not be reasonable or even possible to tolerate other comprehensive doctrines which one does not agree with. If I am correct, it is extremely doubtful whether the overlapping consensus is realizable because its focus, the political conception of justice, requires the citizens to tolerate other doctrines which they may regard

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<sup>53</sup> *Foundations of Liberal Equality*, p. 33, italics added.

as intolerable. Indeed, I think that large-scale toleration can only be a compromise in disguise.

### **A. Why can't the burdens of judgment cause the disagreement on the political conception of justice?**

I believe that if the burdens of judgment are the appropriate explanations for the inevitability of the reasonable pluralism, the citizens in a democratic society cannot affirm any political conception of justice unanimously.

To begin with, we should bear in mind that even if the burdens of judgment exist, one can still agree on the existence of some obvious features like those of reasonable pluralism. One should acknowledge the existence of the burdens of judgment as well because they can be easily observed. They explain why we cannot always gain unanimous agreements on different events in our daily life. These burdens also explain why it is impossible for all citizens in the free institutions of a democratic society to affirm one comprehensive doctrine unanimously.

However, a question arises here. If we agree that these burdens are the suitable explanations for the impossibility of the common affirmation on one comprehensive doctrine, why is it possible that the citizens can affirm unanimously a conception of justice even though it is political?<sup>54</sup>

As I have said before, Rawls thinks that the citizens can commonly affirm the political conception of justice because it is freestanding and its fundamental ideas are

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<sup>54</sup> The need of a commonly accepted conception of justice is due to the incommensurability of different comprehensive doctrines. But the problem is, that we need it does not imply there is such a political conception of justice in this world. This is just like the case that we need a legal system which puts no innocent person in jail. But it appears that it is impossible to have such a legal system. Similarly, I believe that although we need a commonly accepted political conception of justice, we cannot find out such a conception because the burdens of judgment render any common affirmation impossible. I will discuss this in what follows.



prevailing in a democratic society. But the crucial question is, is there any difference between the effect of the burdens of judgment on the comprehensive doctrine and that on the prevailing ideas? Why do these burdens lead to the impossibility of the common affirmation on one comprehensive doctrine but not on the prevailing ideas?

Let us take a closer look at one of the burdens which I have mentioned in (I) (please refer to p. 6), that is, the final burden given by Rawls: great difficulties in setting priorities and making adjustments in being forced to select among cherished values.

Actually, this burden is somehow unclear. If the difficulties mean that we *cannot* set priority or make adjustments when selecting values, there may be no disagreement at all because no selection can be made. However, if this burden is used to explain why there is disagreement, we should understand it in this way: because it is difficult to set priority and make adjustments, at last, some may choose this set of value while some may choose others based on their subjective preference. The difficulties render the common selection impossible. If this interpretation is plausible, this burden can partly explain why there is no comprehensive doctrine chosen by all in a democratic society.

However, why doesn't this burden have the same effect on the prevailing ideas in a democratic society? Does Rawls say that the term 'values' in this burden refers only to "values of comprehensive doctrine" but not "values of the fundamental ideas"?

Even if he really says so, it appears that he is quite unreasonable to make such a claim. The burdens of judgment explain why disagreement is natural and unavoidable. But the disagreement caused by these burdens should not be limited to the comprehensive doctrine only. From the description of these burdens given by Rawls, they explain most of the disagreements in our daily life. Among these disagreements, those which involve value judgment may be the paradigm cases.

Thus, if the burdens of judgment can explain why the citizens cannot commonly affirm any comprehensive doctrine, they also render the common affirmation on the prevailing ideas impossible. This is because these ideas involve moral values. It is too optimistic to think that all citizens can affirm them whatever comprehensive doctrine they hold. Indeed, if we take a look at the modern democratic society, we may discover that there are certainly some who do not accept these ideas. Although these ideas are widely shared, they are not *shared by all*. This may be because some citizens hold a certain kind of comprehensive doctrine which is not compatible with these ideas and they choose to hold the former instead of the latter.

For instance, in a democratic society, there are indeed some religions like Islam which do not accept the liberal ideas of person and society.<sup>55</sup> People holding these religions must choose between the values in their religions and the prevailing liberal ideas when they are in conflicts. But it is extremely doubtful that they will choose the latter all the time.<sup>56</sup>

Suppose citizen A does not accept the fundamental idea of society as fair terms of cooperation. He believes that there is a God who creates this world and he creates people differently. Some people are created as slaves while some are masters. Because of this, the basic structure of a society should be regulated by the principles which can reinforce this master-slave relationship. For him, maybe some kinds of slavery system in ancient time is much more reasonable than today's democratic society.

In this case, Rawls (as well as many other citizens) may reply that citizen A is unreasonable. But as I demonstrated before, it is circular for him to grant the meaning of the 'reasonable' at the outset. Besides, even if Rawls can find out some kind of reasons which

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<sup>55</sup> e.g. For a Islamite, a man is of course superior to a woman. The former should enjoy privileges in the political aspect according to such a believer. It seems that it is hard for him to accept whole-heartedly the liberal ideas of person and society provided that he really devotes himself to his religion.

<sup>56</sup> Rawls thinks that the political virtues may normally outweigh the non-political ones. I think that this view is problematic and I will discuss it later. Moreover, I believe that since people do not accept the superiority of the political virtues, they will not endorse the political conception of justice simply. This is one of the reasons why



are not question begging, it seems that citizens A may not accept them because of the burdens of judgment. Provided the burdens exist, disagreements are inevitable, especially the disagreements on the moral values. Why should one accept these set of moral values but not the other? It seems that it is hard to have strong justification on any particular set of moral values at all.<sup>57</sup>

Since the ideas in the political conception of justice are *fundamental*, whether accepting them or not may be quite subjective. Indeed, a conception which is valuable to one may be nothing to others. At last, the doctrine one accepts may simply be his own decision. This is what Max Weber calls decisionism<sup>58</sup> and this is a special and unavoidable feature of modernity.

Maybe the best defense for these ideas is to ask the one who does not accept them to give reasons for his choice. But this obviously does not work because one may give reasons from his own comprehensive doctrine. If this is the case, the situation is the same. That is, no one can give arguments which can be accepted by all. As a result, even though the liberal ideas of person and society are political rather than comprehensive, it is impossible that everyone can accept them.

One should keep in mind that I am not asserting the impossibility for the citizens to discuss the meaning of the term 'reasonable' publicly. I just doubt if there can be a common understanding of this term in a pluralistic society. Of course, most of us may think that a militant Islam is unreasonable. But I doubt if they will accept that they are unreasonable even

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the overlapping consensus is not realistic in a pluralistic society.

<sup>57</sup> I believe Kai Nielsen's essay "Why should I be moral?" in Kai Nielsen, *Why Be Moral?* (New York: Prometheus Books, 1989) is one of the most outstanding representatives on this issue.

<sup>58</sup> "According to our ultimate standpoint, the one is the devil and the other the God, and the individual has to decide which is God for him and which is the devil. And so it goes throughout all the orders of life." *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), translated by H. H. Gerth and C. Wright Mills, p. 148.

after a free and equal contest with us (though there may be some of them who can be convinced by us).<sup>59</sup>

Moreover, apart from these extreme religions, there are still other comprehensive doctrines which do not hold the liberal ideas of person and society. Provided that the burdens of judgment exist, I doubt as well if they will accept these ideas. If this is really the case, it is hopeless that all citizens will affirm the political conception of justice as well as its fundamental ideas. In the last resort, Rawls will simply exclude them from a well-ordered society because they are politically unreasonable. As he says, “[o]f course, fundamentalist religious doctrines and autocratic and dictatorial rulers will reject the ideas of public reason and deliberative democracy. They will say that democracy leads to a culture contrary to their religion, or denies the values that only autocratic or dictatorial rule can secure. They assert that the religiously true, or the philosophically true, overrides the politically reasonable. *We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said.*”<sup>60</sup>

But as I have said, if he does so, then the remaining ones in a well-ordered society may only be those who can accept the liberal ideas just like the three views in his example of the overlapping consensus. If this is so, what is the significance of *PL*? Even *ATOJ* can accomplish this. There is no need for him to seek the public justification because the overlapping consensus only needs to contain those ‘reasonable’ doctrines. It seems redundant for him to transform his conception of justice from a comprehensive doctrine to a political conception because even though the conception of justice is comprehensive, those ‘reasonable’ comprehensive doctrines can affirm it at well.<sup>61</sup>

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<sup>59</sup> This involves the problems of relativism which I cannot afford to discuss in this thesis.

<sup>60</sup> John Rawls, “The Idea of Public Reason Revisited”, in *The University of Chicago Law Review*, Vol. 64, (Summer 1997, Number 3), pp. 805-806, italics added.

<sup>61</sup> Moreover, as I have shown, Rawls is circular in arguing for the political reasonableness of his conception of justice.



Thus, owing to the burdens of judgment, I would like to conclude that it is not convincing for Rawls to claim that the citizens can commonly affirm the political conception of justice if they cannot affirm any comprehensive doctrine unanimously.

In this part, I use the burdens of judgment to reject that the political conception of justice can be the focus of the overlapping consensus. However, this may lead to objection. In fact, the way I use the burdens of judgment is too strong according to some people<sup>62</sup> (I argue that these burdens lead to the result that we cannot even agree on the political conception of justice). Some think that this is a wrong criticism. As Muhall and Swift say,

These two lines of criticism of his 'burdens of judgment' go wrong because they assume that reasonable constraints are purely epistemological rather than being crucially moral in nature. The burdens of judgment are indeed purely epistemological phenomena, but it is only when conjoined with certain moral assumptions that they deliver his full account of the reasonable; and his views, first, that there cannot be reasonable disagreement over the political values and, second, that there cannot be reasonable agreement upon (elements of) comprehensive doctrines, will remain incomprehensible if they are taken independently of those moral assumptions. If, however, we see that it is part of what it means to be reasonable that one views society as a system of fair cooperation between free and equal citizens, then it follows immediately that it is (morally) unreasonable to violate the general priority of political over non-political values<sup>63</sup>

Muhall and Swift tell us that only when the burdens of judgment conjoined with the moral ideas of person and society will they lead to the result that "it is unreasonable to violate the general priority of political over non-political values". They render the moral requirement of toleration plausible. This is the real function of the burdens.

Although I agree with them that the burdens of judgment must conjoin with the moral ideas in order to perform their real function, I think they are wrong to claim that the criticism

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<sup>62</sup> *Liberals & Communitarians*, p. 234.

goes wrong. This is because even if I accept the role of the burdens of judgment are not “purely epistemological” but “being crucially moral in nature”, the problems still exist. That is, they inevitably lead to disagreements.

Because of the burdens of judgment, it is natural for the citizens to disagree on the liberal ideas or the meaning of the term ‘reasonable’. This undermines the persuasive power of Rawls’ theory. No matter what the real function of the burdens of judgment is, we should clarify the nature and the effect of them. But once I take them into examination, I discover that they create serious problems for *PL*.

## **B. Is political conception of justice really political?**

### ***a. The affirmation of the burdens of judgment***

As I have argued above, it is quite impossible that all reasonable citizens can affirm Rawls’ political conception of justice because of the burdens of judgment. In this part, I would like to show that citizens cannot affirm it because it is not as freestanding as Rawls claims it to be. In other words, I believe Rawls’ political conception of justice involves comprehensive element implicitly. Some people like Muhall and Swift, think so:

Indeed, since mounting even this defense implies – on Rawls’ own admission – denying the truth of any comprehensive convictions that contest the reality or significance of the fact of reasonable pluralism, it appears that how we acknowledge the burdens of judgment is in fact a function of our comprehensive convictions.<sup>64</sup>

They think that the way we acknowledge the burdens of judgment involves our comprehensive convictions and thus, the assertion of the burdens is not purely political

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<sup>63</sup> *ibid.*, pp. 237.



(Here, the meaning of the acknowledgement of the burdens is the acknowledgment of their result, that is, the reasonableness of toleration).

According to Rawls, the burdens of judgment lead to the virtue of toleration. However, in order to make this sound, the burdens must be conjoined with the liberal ideas of person and society. This is because if persons are not equal and free or the society is not a fair system of cooperation, the stronger ones may not accept that it is reasonable to tolerate the weaker ones. Thus, if we acknowledge the burdens of judgment as the reason of our toleration, we must at first accept the liberal ideas of person and society.

Nonetheless, as I demonstrated above, the liberal ideas of person and society may not be justified to all citizens indeed. For those who accept these ideas, their acceptance may usually involve their own comprehensive doctrine. This is why Mulhall and Swift say that “it appears that how we acknowledge the burdens of judgment is in fact a function of our comprehensive convictions” and they claim that:

In that case, Rawls’ latest defense of the limits of the political itself fails to respect those limits; the purely political Rawlsian state must inevitably base itself upon elements of a comprehensive doctrine, and so fails to live up to its own claims to neutrality.<sup>65</sup>

However, I think that their argument is inadequate. This is because they just argue that people affirm the political conception of justice due to their own comprehensive doctrine, but they do not show us that the political conception of justice is not freestanding.

Indeed, we should clarify two questions at first. The first question is whether the citizens affirm the political conception of justice because of their own comprehensive doctrine. Even if the answer to this question is yes, it does not mean that Rawls’ political

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<sup>64</sup> *ibid.*, p. 245.

<sup>65</sup> *ibid.*, p. 245.

conception of justice is not freestanding. Rawls himself explicitly claims that the citizens can freely think that the political conception of justice is derived from their own comprehensive doctrine (please refer to (I)).

The second question is whether the political conception of justice can be presented as independent of any comprehensive doctrine. The answer to this question is the key point of Rawls' political conception of justice as freestanding. If the political conception of justice cannot be presented as independent of any comprehensive doctrine, it is not a freestanding conception and Rawls' work in *PL* is a total failure.

This is why I believe that Rawls will reply Muhall and Swift as follow: whether one accepts the political conception of justice of course can depend on his own comprehensive doctrine. However, this does not mean that the political conception itself involves comprehensive elements. *Once the political conception of justice can be presented as freestanding*, it involves no comprehensive element at all. Thus, Muhall and Swift do not show successfully that Rawls' political conception of justice is comprehensive.

Owing to this, when one wants to show that Rawls' political conception of justice is not political, one cannot show only that people endorse it because of their comprehensive doctrine (this is neither necessary nor sufficient). Instead, one must show that the fundamental ideas in his political conception of justice contain comprehensive convictions. This is what I am going to do. I want to show in the following section that the liberal idea of person is not so freestanding as Rawls supposes it to be.

### ***b. The fundamental liberal idea of person***

Rawls believes that the political conception of justice articulates the prevailing ideas and is built upon them so that it can be publicly justified. But the problem is, where do these



ideas come from? Do they appear independently of any comprehensive doctrine? This is obviously not the case. Although these ideas are embedded in the political culture in a modern democratic society, they originated from the doctrine of liberalism. To say that they are political instead of comprehensive seems to be somehow self-cheating.

For instance, is person really free and equal? As I have said several times, there are comprehensive religious doctrines which are incompatible with or do not accept this liberal idea of person. This, to a certain extent, shows us that the liberal ideas may not be as freestanding as Rawls claims. Nonetheless, Rawls does admit that whether one accepts these ideas may depend on his own comprehensive doctrine. That some comprehensive doctrines do not contain them does not imply the political conception of justice is not freestanding. The most important question is whether the political conception of justice itself can be presented as a freestanding conception.

In fact, I think that Rawls' presentation of the political conception of justice as freestanding is not convincing, since its fundamental idea of person involves comprehensive liberal elements. Let us examine it closely.

In *PL*, Rawls says that the conception of person is political. "[P]ersons were regarded as free and equal persons in virtue of their possessing to the requisite degree the two powers of moral personality, namely, the capacity for a sense of justice and the capacity for a conception of the good" (*PL*, p. 34).

Person are free and equal because they possess the two moral powers. In fact, they are free in three aspects:

- They are free because they think that they have moral power to have, revise, and change their conception of good.

- They regard themselves as self-authenticating sources of valid claims which are different from a slave.
- They regard themselves as capable of taking responsibility for their ends.<sup>66</sup>

I believe the political conception of person is indeed a reply to the critique of Michael Sandel's, *Liberalism and the Limit of Justice*. His book points out that there is a metaphysical conception of person in Rawls' original position. In order to avoid this charge, Rawls emphasizes that the conception of person is political in nature. Moreover, he tries to reply this criticism in a footnote:

Part of the difficulty (difficulty in showing that the view of metaphysical presupposition in the original position has no foothold) is that there is no accepted understanding of what a metaphysical doctrines is... One might also say that our ordinary conception of persons as the basic units of deliberation and responsibility presupposes, or in some way involves, certain metaphysical theses about the nature of persons as moral or political agents. Following the precept of avoidance, I should not want to deny these claims...If metaphysical presuppositions are involved, perhaps they are so general that they would not distinguish between the metaphysical views... In this case they would not appear to be relevant for the structure and content of a political conception of justice one way or the other. (*PL*, p. 29, f.n. 31, parenthesis added)

This shows us that Rawls does not ignore Sandel's challenge on the metaphysical conception of person in the original position. However, does Rawls successfully reply to Sandel's criticism? Are the metaphysical presuppositions in the original position (if any) really "so general that they would not distinguish between the metaphysical views"? I am afraid that he is too optimistic in claiming this. Let us take a brief consideration on why

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<sup>66</sup> *PL*, pp. 29-34.



Sandel claims that there is a metaphysical conception of person in Rawls' original position at first.

First of all, Sandel tells us that the metaphysical conception of person in Rawls' original position is common to deontological liberalism in general. As he points out, Rawls' liberalism is deontological in nature which is similar to Kant's:

Like Kant, Rawls is a deontological liberal. His book takes the main thesis of the deontological ethic as its central claim...It concerns not the principles of justice but the status of justice itself. It is the assertion that both opens the book and concludes it, the core conviction Rawls seeks above all to defend. It is the claim that '*justice is the first virtue of social institutions*', the single most important consideration in assessing the basic structure of society and the overall direction of social change.<sup>67</sup>

In fact, "Justice is the first virtue of social institutions" (the priority of right over good) is the core conviction in Rawls' theory both in *ATOJ* or *PL*. He puts this deep conviction at the beginning of *ATOJ* in this way:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. (*ATOJ*, p. 3)

One can feel how important this idea is in Rawls' theory from this short paragraph. In order to make a society just, Rawls must find out the suitable principles of justice which can be used to regulate a society. He uses the original position to simulate the circumstances of

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<sup>67</sup> Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press, 1982), p. 15, italics added. In this passage, the term 'book' refers to *ATOJ* instead of *PL*.

justice<sup>68</sup> and he thinks that the principles of justice chosen by the parties inside are those which should be adopted by everyone because of the nature of the original position:

I have emphasized that this original position is purely hypothetical. It is natural to ask why, if this agreement is never actually entered into, we should take any interest in these principles, moral or otherwise. The answer is that the conditions embodied in the description of the original position are ones that we do in fact accept. Or if we do not, then perhaps we can be persuaded to do so by philosophical reflection. Each aspect of the contractual situation can be given supporting grounds...One way to look at the idea of the original position, therefore, is to see it as an expository device which sums up the meaning of these conditions and helps us to extract their consequences. On the other hand, this conception is also an intuitive notion that suggests its own elaboration, so that led on by it we are drawn to define more clearly the standpoint from which we can best interpret moral relationships. (*ATOL*, pp. 21-22)<sup>69</sup>

A similar view can also be found in *PL*:

As a device of representation the idea of the original position serves as a means of public reflection and self-clarification. It helps us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal citizens from one generation to the next. The original position serves as a mediating idea by which all our considered convictions, whatever their level of generality...can be brought to bear on one another. This enables us to establish greater coherence among all our judgment; and with this deeper self-understanding we can attain wider agreement among one another. (*PL*, p. 26)

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<sup>68</sup> The circumstances of justice are the conditions that cause the problem of justice to arise (*ATOL*, 126-130). Among them, the condition of moderate scarcity and that of mutual disinterestedness are the most important ones. As Rawls says, "For simplicity I often stress the condition of moderate scarcity (among the objective circumstances), and that of mutual disinterest, or individuals taking no interest in one another's interest (among the subjective circumstances)...Unless these circumstances existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage." (*ATOL*, p. 128) From this, one can easily see that if there are no circumstances of justice in a society, the persons inside have no need to treat justice as a virtue.

<sup>69</sup> Please refer to Ronald Dworkin, "The Original Position" in *Reading Rawls* (Stanford; California: Stanford



These two passages display the idea of the original position in both of *ATOJ* and *PL*. It is a device which can help us to “best interpret moral relationships”. These relationships are in a scheme of fair cooperation between persons who are free and equal in a modern democratic society because “the conditions embodied in the description of the original position are ones that we do in fact accept”. And these conditions constitute the circumstances of justice.

Rawls thinks that for a society which is situated in these circumstances, justice will be the first virtue. However, as Sandel says, this assertion of “justice as the first virtue” in fact presupposes a metaphysical conception of the self which deontological liberalism always contains:

With each transition, a substantive self, thick with particular traits, is progressively shorn of characteristics once taken to be essential to its identity; as more of its features are seen to be arbitrarily given, they are relegated from presumed constituents to mere attributes of the self. More becomes *mine*, and less remains *me*, to recall our earlier formulation, until ultimately the self is purged of empirical constituents altogether, and transformed into a condition of agency standing beyond the objects of its possession...Only if the fate of the self is thus detached from of its attributes and aims, subject as they are to the vagaries of circumstances, can its priority be preserved and its agency guaranteed.<sup>70</sup>

Sandel claims this because for a deontological liberal like Rawls, the main theme of his doctrine is “priority of right over good”. This means that whatever the conception of good one is holding, whenever this conception is in conflict with right (the principles of justice), it must be abandoned or reformulated.

Briefly speaking, the plausibility of the above theme presupposes “priority of the self over its ends”. This is needed because the “priority of right over good” presupposes that one

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University Press, 1974), ed. Norman Daniels for a detailed discussion of the original position in *ATOJ*.

is able to revise or abandon his goals, desires, or conception of good whenever they come into conflict with the principles of justice. This ability implies a self which is prior to its ends. It is a self which is able to choose among different goals, ends or conceptions of good and is distinct from them. As Sandel claims that:

The priority of the self over its ends means that I am not merely the passive receptacle of the accumulated aims, attributes, and purposes thrown up by experience, not simply a product of the vagaries of circumstance, but always, irreducibly, an active, willing agent, distinguishable from my surroundings, and capable of choice. To identify any set of characteristics as *my* aims, ambitions, desires, and so on, is always to imply some subject 'me' standing behind them, and the shape of this 'me' must be given prior to any of the ends or attributes I bear...And before an end can be chosen, there must be a self around to choose it.<sup>71</sup>

Accordingly, with the purpose of making "priority of right over good" valid, there must be a self which is prior to its ends, interests, ambitions and so on. It is an "unencumbered self" which can be detached from its circumstances. And the most important point is, it can make choice freely. *In fact, it is a "choosing self" which chooses among different conceptions of good which are compatible with the two principles of justice* (recall the first property of a free person in which I showed in p. 50).

If Rawls' conception of person really contains implicitly such an idea of choosing self, then it is not simply a political conception. Instead, it is a liberal conception. Apparently, this conception may not be contained in other comprehensive doctrines which are not liberal in nature.

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<sup>70</sup> *Liberalism and the Limits of Justice*, p. 94.

<sup>71</sup> *Ibid*, p. 19.



If Sandel is right in arguing that the conception of person is an unencumbered self in *ATOJ*, then the political conception of justice in *PL* would also involve this metaphysical conception as well.

In *PL*, the original position is still adopted to obtain the principles of justice. Thus, if the principles of justice chosen by the parties in the original position fit such a metaphysical conception of person, it is hard to argue that they are freestanding because this metaphysical conception may not be so prevailing in a democratic society.

Surprisingly, Rawls seems to underestimate the effect of this critique. His response is simple. Despite its considerable length, I quote the following passage because of its importance:

I believe this to be an illusion caused by not seeing the original position as a device of representation. The veil of ignorance, to mention one prominent feature of that position, has no specific metaphysical implications concerning the self; it does not imply that the self is ontologically prior to the facts about persons that the parties are excluded from knowing. We can, as it were, enter this position at any time simply by reasoning for principles of justice in accordance with the enumerated restrictions on information. When, in this way, we simulate being in the original position, our reasoning no more commits us to a particular metaphysical doctrine about the nature of the self than our acting a part in a play, say of Macbeth or lady Macbeth, commits us to thinking that we are really a king or a queen engaged in a desperate struggle for political power. We must keep in mind that we are trying to show how the idea of society as a fair system of social cooperation can be unfolded so as to find principles specifying the basic rights and liberties and the forms of equality most appropriate to those cooperating, once they are regarded as citizens, as free and equal persons. (*PL*, p. 27)<sup>72</sup>

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<sup>72</sup> Rawls says, "I believe the reply found in chap. 4 of Will Kymlicka's *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989) is on the whole satisfactory, modulo adjustments that may need to be made to fit it within political liberalism as opposed to liberalism as a comprehensive doctrine" (*PL*, p. 27, f.n. 29). Nevertheless, in chap. 4 of *Liberalism, Community, and Culture*, The work of Kymlicka's is mainly to criticize Sandel's communitarian's conception of self instead of showing that Rawls' theory does not contain a

Rawls' reply is simple and in a sense superficial: Sandel is wrong in not seeing the original position as a *device of representation*. In fact, the original position is just similar to a role play. We act as one of the characters but we certainly know that we are not them. We just try to "show how the idea of society as a fair system of social cooperation can be unfolded so as to find principles specifying the basic rights and liberties and the forms of equality most appropriate to those cooperating, once they are regarded as citizens, as free and equal persons" in the original position.

To tell the truth, I find this reply puzzling and I really doubt if this can be a good reply to Sandel's criticism. First of all, Rawls does not explicitly claim that the original position contains no metaphysical conception of person at all. He just says that, "our reasoning no more commits us to a particular metaphysical doctrine about the nature of the self than our acting a part in a play".

However, do the characters in the play have that metaphysical nature of the self? Although Rawls seems to deny the metaphysical conception of person in the original position (as I have quoted his words earlier, he thinks that even if the original position really involves a metaphysical conception of person, it is general enough and would not distinguish between different metaphysical views), he has offered no detailed argument. But this is obviously not enough because Sandel has explicitly shown that Rawls' original position contains such a metaphysical conception of person. In order to reply him, Rawls must at least tell us why the metaphysical self pointed out by Sandel is not necessarily contained in the original position. It seems to me that Rawls simply avoid the question and this is why I think that his work is far from satisfactory.

On the other hand, if the original position really contains such a metaphysical conception of self, the problem is serious. In fact, if we simply treat the original position as a

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metaphysical conception of self. Thus, whether his reply can stand or not is not the concern of that chapter.



role play, it is unclear why we should abide by the principles chosen in it after the veil of ignorance is lifted up. Although we may have good reasons to adopt them, this does not mean that they have a categorical force on us.

This is especially true if we just treat the original position as a device of representation. When we are Macbeth in a drama, we act according to his personality. However, we need not live like him (though we may think that we are willing to be him) in our daily life.

The original position differs from a drama in that the former has some properties similar to our real situations. They are the circumstances of justice. And thus, the principles of justice chosen in it should be adopted by us if they can pass the test of reflective equilibrium. It has effect on our real life and this is why we cannot merely treat the original position as a role play.

Hence, if Rawls insists that we should abide by the principles chosen in the original position (no matter in the political aspect or non-political ones), he must admit that to a certain extent, the nature of person in his mind is similar to that of the member inside the original position. This admission shows us that his idea of person must involve a metaphysical conception of person if the original position really contains such a conception indeed.

In a nutshell, I would like to conclude that even though the function of the original position is simply a device of representation, once it involves a liberal metaphysical conception of person, whether Rawls' political conception of justice is freestanding will be highly doubtful. Besides, if Rawls denies the metaphysical conception of person in the original position pointed out by Sandel without showing the reasons in detail, his work is far from enough.

## C. Political virtue?

### *a. The reasons for the stableness of a well-ordered society*

As I have mentioned in (I), in a well-ordered society, stability is sustained because of two reasons. One is what Rawls calls moral psychology while the other is the reasonable overlapping consensus.

I will not take up the former in this thesis. For the latter, it can sustain stability because when it is realized, the citizens can hold their own comprehensive doctrines on the one hand and the political conception of justice on the other. When settling basic political questions, they are willing to abide by the political conception of justice which is the content of the public reason, instead of their own comprehensive doctrines.

Even if there are conflicts between the political conception of justice and different comprehensive doctrines, the stability will not be undermined. This is due to the reason that the political virtues (which sustain the political conception of justice) may normally outweigh the non-political values.<sup>73</sup> Recall the important passage I have quoted in (I) (p. 19). It tells us why a well-ordered society is stable:

- The virtues of political cooperation that make a constitutional regime possible are very great (e.g. virtue of toleration, reasonableness). The values conflict with the political conception of justice and its sustaining political virtues may be normally outweighed because they come into conflict with the very conditions that make fair social cooperation possible.

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<sup>73</sup> This is one of the reasons why Rawls thinks that the overlapping consensus is possible and it is also the key point of why the well-ordered society is stable in a right way.



- Severe conflicts are much reduced as the political conception of justice is not viewed as incompatible with basic religious, philosophical, and moral values when reasonable overlapping consensus is realized.

Nonetheless, these two points are obscure and the vagueness inside hinders our understanding of what Rawls exactly means.

First of all, if the political conception of justice is really compatible with the basic comprehensive doctrines in a democratic society, why are there severe conflicts? If the severe conflicts are much reduced, then why should Rawls take the problem of stability so seriously? What is the exact meaning of ‘are much reduced’? Does it refer to “no conflict at all”? If this is so, Rawls need not raise the first point because there is no conflict needed to be resolved by the superiority of the political virtues. If not, how serious are the conflicts? Are they severe enough to undermine the social unity of a well-ordered society?

In fact, obviously, the political conception of justice may be in conflict with some religious doctrines like Islam and we can predict the conflicts may be quite severe. If they are severe enough, how can the political virtues normally outweigh the non-political ones? Is it enough to claim only that because these political virtues are great, thus, they can have the outweighing power in case of conflict?

Moreover, one can also find that “may be normally outweighed” in Rawls’ first point is especially indistinct. That the non-political values may be normally outweighed by the political ones means that it also *may not be* the case. If the non-political values can really outweigh the political virtues, when will be the case and why is it so? Rawls just explains why the non-political values are normally outweighed, but not why this may not be the case. If it really happens, will the stability of a well-ordered society be shaken?

All these lead to confusion. It is quite astonishing that Rawls just puts these questions aside. Maybe we should not treat the passage so strictly since it is only some kind of estimation. There is no well-ordered society in human history at all. He may not have deeply thought about the situation of a well-ordered society indeed.<sup>74</sup>

If this is really the case, I think it is time for us to make it clear and to reflect whether his view is reasonable. In fact, I believe that Rawls is unsuccessful in his argument for the superiority of the political virtues. Because of this, I do not find the possibility of the overlapping consensus or its stability convincing.

***b. It is impossible for all reasonable citizens to respect political virtues in the political aspect***

**i. The aim of social cooperation**

I believe that Rawls fails to argue for the superiority of the political virtues because of several reasons. First of all, there is an internal inconsistency he needs to solve if he insists his point.

Rawls thinks that the political virtues may normally outweigh other conflicting non-political values because they are “the very conditions that make fair social cooperation possible on a footing of mutual respect”. Nevertheless, in order that this reason can successfully support the superiority of the political virtues, Rawls needs to show further why the fair social cooperation is so important that the citizens can suppress their own comprehensive doctrines for them in case of conflict.

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<sup>74</sup> This may be quite similar to Marx's prediction of the utopia. That is, in such a place, people can do what they want in most of the time and because of the highly developed productive forces, they only need to spend very little time in producing. For an excellent exposition of Marx's historical materialism, please refer to Cohen, G. A., *Karl Marx's Theory of History: A Defence*, (Oxford and Princeton, 1978).



Simply speaking, for a liberal like Rawls, the fair social cooperation is important because it provides a set of institutions in which one can freely pursue his own conception of good. Man's power is limited, so, if one wants to fulfill his goals, he may have to ask for the cooperation of others. This is why we need a society. In a society, we can achieve our goals much easier through cooperation. If the society is unfair, some may be repressed by others and their conceptions of good cannot be pursued. This is not an acceptable society for a liberal.

However, there is obviously a presupposition in this liberal idea. That is, for a liberal, one joins the society in order to pursue his own conception of good. Thus, joining society can be said to be a means while the pursuing of one's conception of good is the end.

If this is true, when one finds that the society he joins cannot help him to realize his conception of good, or more extremely, even limits him to achieve his goal, should he still abide by the rules in that society provided that he cannot leave it? Is this really reasonable?

For instance, suppose there is a devout religious believer whose conception of good is to make others believe in his religious comprehensive doctrine and he does not accept that people are equal and free (because of his own comprehensive doctrine). Furthermore, his doctrine tells him that there is nothing wrong in coercing others into believing his doctrine. In fact, his ultimate goal is to establish a society which is ruled by his doctrine.

In this case, the man's convictions obviously conflict with the political virtues like the virtue of toleration. Why can the political virtues outweigh his comprehensive convictions? That they make the fair social cooperation possible does not guarantee the man will accept them instead of the non-political values.

Indeed, if the aim of joining a society is to advance mutual benefits (remember the mutually-disinterested person in the original position), it is unclear why the virtues which sustain such a fair society are so important to the one who cannot benefit from that society. It

is also unclear why the man in the example can suppress his own comprehensive doctrine for the political conception of justice.

Here, Rawls will of course reply in this way: one should respect other's freedom to realize their conceptions of good because people are all *equal and free*. Thus, if the pursuing of one's conception of good needs to sacrifice those of the others, one should not pursue it. This is the virtue of reasonableness.

However, this view is questionable. It is true that Rawls does not base the principles of justice on a self-interested person solely (both in *ATOJ* or *PL*) because he knows very well that such a person may not abide by the principles if the veil of ignorance is lifted up. As Bernard Williams says,

Rawls did not suppose that social justice could be based solely on self-interest...The whole point of the model is that a person who is willing to think in these terms, to imagine himself prepared to consider what is fair, he is a person who, as well as being merely rational, is 'reasonable', as Rawls says, and is willing to live on reasonable terms of cooperation with others. This point, central to *Theory*, was made entirely clear there, and Rawls has shown a saintly degree of patience with the remarkable number of critics who have not understood it.<sup>75</sup>

Unfortunately, as I have shown, it is untrue that all the citizens in a democratic society are 'reasonable' in Rawls' sense. And the fatal point is, he is circular and thus, unconvincing, in arguing for the 'reasonableness' of the fundamental liberal ideas of person and society in the political conception of justice.

It appears that the problem still remains unsolved: provided that one believes Rawls' use of the term 'reasonableness' is not really reasonable, why should one abide by the principles of justice after the veil of ignorance is removed?

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<sup>75</sup> Bernard Williams, "A Fair State", p. 7.



Besides, even if the man endorses the reasonableness in accepting these fundamental ideas as well as his political conception of justice, this does not mean that he will accept the *superiority* of the political virtues too. As I have said, if Rawls wants to base the superiority of the political virtues on their function as the very conditions which make the fair social cooperation possible, he must show us why the citizens can suppress their comprehensive doctrines for it in case of conflict. And bear in mind that we are now discussing whether the man who has a conception of good which is conflicting with the political virtues will choose the latter instead of the former. But the point is that even if the man has already accepted the liberal ideas, *this does not imply that the political virtues will win all the time*. This is because though he endorses the liberal ideas, he may also think that it is reasonable to abide by his comprehensive convictions.

Actually, while one can hold that he should establish a society which is regulated by his comprehensive doctrine (even though this may involve coercion). He may also think that it is reasonable not to invade others' rights because people are equal and free.<sup>76</sup> However, neither does Rawls guarantee that the political virtues *will* outweigh the non-political ones, nor does he successfully show that the former *may normally* outweigh the latter.

In short, if Rawls wants to base the stability of a well-ordered society on the political virtues, it is inadequate for him to show only the reasonableness in accepting the political conception of justice. He must also display *the reasonableness of the superiority* of the political virtue (provided that one's aim of joining the society is to pursue his own conception of good) in a convincing way. Regrettably, he just simply claims that they are "the very

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<sup>76</sup> Some may think that it is impossible for one to hold two incompatible ideas at the same time. But this is obviously wrong. We usually face such predicaments in our daily life. Otherwise, inconsistency of our responses to certain event become impossible. As Alasdair MacIntyre says, "To some significant, even if unmeasured extent, these disagreements seem to occur within individuals, one and the same individual hovering between two or more rival opinions, inclining to one on some occasions and in some contexts, to another on others." In Alasdair MacIntyre, "The Privatization of Good: An Inaugural Lecture", in *The Liberalism-Communitarianism Debate* (Rowman & Littlefield, 1994) ed. C.F. Delaney, p. 7. This 'hovering' puts the possibility of the overlapping consensus or even its stability into doubt.

conditions that make fair social cooperation possible on a footing of mutual respect". This is apparently unacceptable to a person who is holding a conception of good which is not liberal in nature.

## ii. It is impossible to privatize the good

Apart from what I have discussed above, there is a much more crucial reason for why it is impossible for all reasonable citizens to respect the political virtues as well as endorsing the political conception of justice in the political aspect.

As Rawls declares, the political virtues include the "virtues of tolerance and being ready to meet others halfway, and the virtue of reasonableness and the sense of fairness" (*PL*, p. 157). Among them, the virtue of reasonableness is the key point to why one should accept the political conception of justice. However, as I have shown, Rawls fails to argue for the reasonableness of his use of the term 'reasonable'. Hence, he is not convincing in imposing a moral responsibility on the citizens to accept the political conception of justice.

Here, I would like to further suggest that the citizens cannot affirm Rawls' political virtues unanimously as well because they require the citizens to endorse the political conception of justice in the political aspect no matter what conception of good they hold.<sup>77</sup>

At the very beginning of this chapter (p. 26), I have put Rawls' ambition in this way: he wants the citizens in a democratic society, who are holding different comprehensive doctrines and conceptions of good, to affirm liberal's priority of right in the political aspect and put their non-political values in the bracket when considering political questions.<sup>78</sup>

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<sup>77</sup> I believe this point is also valid in arguing the impossibility in accepting other political virtues.

<sup>78</sup> Here, "the priority of right means that the principles of political justice impose limits on permissible ways of life; and hence *the claims citizens make to pursue ends that transgress those limits have no weight*" (*PL*, p. 174, italics added).



This ambition is easy to understand. Rawls wants all citizens in a pluralistic democratic society to affirm his political conception of justice, that is, to abide by the two principles of justice, in the political aspect, whatever conceptions of good they hold. If the conception of good one holds is in conflict with the political conception of justice, the former will have to give way to the latter. But we can freely pursue our own conceptions of good in private life which is not regulated by the political conception of justice (remember, the subject to which the political conception of justice applies is the basic structure).

Nonetheless, the question one should ask is, is it really possible for one to hold a conception of good and a separated conception of right which may have no relation with that conception of good simultaneously?

An affirmative answer is given by the liberals in today's democratic society. Indeed, not only Rawls, but also liberals in general, have this intention to split the conception of good and right into two separated fields. As MacIntyre says, "[t]his socially divorce between rules defining right action on the one hand and conceptions of the human good on the other is one of those aspects of such societies in virtue of which they are entitled to be called liberal."<sup>79</sup>

The liberals want to do so because they admit that it is impossible to have a voluntary agreement on one conception of good in today's society (remember Rawls' suggestion of the burdens of judgment). We should not be coerced by others into affirming a conception of good or comprehensive doctrine. Thus, in a just society, the government should not use state power to promote any one of the comprehensive doctrines because this is morally wrong. In order to regulate a well-ordered society, Rawls works out the political conception of justice which he thinks can best represent the moral conceptions of person and society in a modern democratic society. And any conception of good or comprehensive doctrine which transgresses its line should be rejected.

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<sup>79</sup> "The Privatization of Good: An Inaugural Lecture", p. 3.

But here, the puzzling point is that, if the citizens cannot commonly agree on any conception of good, why can they affirm one conception of right unanimously? Why can they commonly agree the priority of right over good in the political aspect?

As I have said in earlier part, if the burdens of judgment lead the citizens to disagree on any one of the comprehensive doctrines, it is natural that they can also lead the citizens to disagree on any conception of right as well as its priority.

From this, one can easily observe that Rawls (so do other liberals) treats the conception of good and right in a very different way. As MacIntyre points out:

Notice that for liberalism understood in this way everything turns on two contentions: first, that in the debate between particular rival and alternative conceptions of the human good, not only has none established a claim to decisive rational superiority over its rival, but that it should not even be a matter of public, as against private interest how we ought to proceed in evaluating the rational merits of rival claims in this area; and *second that rational agreement on moral rules can be...somehow or other assured in a way that deserves to secure the consent and compliance of all rational persons, and that this agreement is available or can be made available as a key point of reference in public debate and decision making.*<sup>80</sup>

MacIntyre tells us that liberalism on one facet holds that there is no common agreement on any one of the comprehensive doctrines or the conceptions of good in a modern democratic society. But interestingly, on the other facet, it insists that a common agreement on the priority of right is possible, at least in the political aspect.

In other words, for a liberal, although there is no consensus on any conception of good in one's private life, as a rational and reasonable citizen, one should legitimately be

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<sup>80</sup> Ibid, p. 5, italics added.



required to abide by the liberal moral rules in the public realm. In this way, using MacIntyre's term, the "good has been privatized".<sup>81</sup>

However, as MacIntyre suggests, it is rather doubtful if it is really plausible for all citizens to share the idea of moral rule in the same way but not the same conception of good (even though the moral rules are limited in the public realm). This view is problematic because if one holds some kind of conception of good which is incompatible with Rawls' principles of justice (conception of right), how can he interpret the latter as worthy of supporting? As MacIntyre tells us explicitly, "Adequate knowledge of moral rules is inseparable from and cannot be had without genuine knowledge of human good".<sup>82</sup> Without a conception of good, one cannot even give a substantial ground in supporting any conception of right. Before one can affirm some kinds of moral rule, he must be able to interpret why such rules are worth advocating.<sup>83</sup> But obviously, this can only be done through one's own conception of good.

MacIntyre's illustrates his claim with the phenomenon of lying. In today's democratic society, honesty is somehow a shared moral maxim for everyone. However, how to interpret this rule can lead to serious disagreement. Firstly, although the citizens share this maxim, they have no agreement on what situations this maxim can be violated. For example, if there is a man lying for the lives of many people in a war, is it permissible? In fact, as demonstrated by MacIntyre, there are many cases in which the citizens may have different judgments on whether it is acceptable to lie if they are holding different conceptions of good.

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<sup>81</sup> Ibid, p. 4.

<sup>82</sup> Ibid, p. 2.

<sup>83</sup> I must note that the term 'before' in this sentence is somehow misleading. In fact, according to MacIntyre, the relation between moral rules and conception of good is dialectical. As he says, "Each of us learns how to articulate his or her own initial inner capacity for comprehending what the good is in the course of also learning from others about rules and about virtues, so that, through a dialectical process of questioning the ways in which rules, virtues, goods, and *the* good are interrelated, we gradually come to understand the unity of the deductive structure of practical reasoning." Ibid, p. 2.

This is equal to saying that they have no agreement on what the exceptions should be even though they share the same moral ideas.

Secondly, even if the citizens can all agree on some kinds of lie as impermissible, there will still be disagreement on how serious the offense is. They do not know how to rank the offenses of lie according to the seriousness because they have no common agreement on it. Furthermore, in spite of the fact that they can agree on these two cases, they will still disagree on how to treat the liar. Is it suitable to put him in jail or use fine? Should the offender be forgiven and in what ways should he be forgiven? It seems that these questions result in serious disagreements as well.<sup>84</sup>

In this simple demonstration, one can observe that in a pluralistic society, it is not easy to reach a common agreement on moral rules. This is not because the citizens have no method to reach agreement. Rather, it is because they have “too many such methods, each of them incompatible in important ways with some of the others, not only in the type of argument proposed as appropriate for settling disputes about the nature and content of moral rules, but also in the substantive conclusions arrived at about the nature and content of such rules.”<sup>85</sup> These methods come from different views on what human good is.

In other words, the citizens have no consensus on the moral rules because their own conceptions of good are conflicting with one another. It seems that they are hopeless to affirm a common moral rule in the same way provided that they have different conceptions of good. And this is why one can easily observe from a modern democratic society that, when the citizens debate about their shared moral rules and the way these rules should be treated, they cannot escape from debating about the appropriate conception of good for a human being.

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<sup>84</sup> Ibid, p. 7.

<sup>85</sup> Ibid, p. 5.



In fact, not only lying, but many other moral rules appear to have the same problem, that is, even if all share the similar idea in those rules, it seems that people share them in a different way. There is no common agreement on how these rules should be carried out or what should be counted as an exception.

The problem is much more obvious when one has to determine moral rules in the public realm. It is likely that disagreements are unavoidable because one cannot appeal to his own conception of good in today's liberal society. Thus, there are intractable disputes on whether abortion or special sexual orientations are permissible.

According to MacIntyre, some public questions like abortion or how to distribute resources between the young and the old has no commonly agreed solution because "the privatization of the good thus ensures not only that we are deprived of adequately determinate shared moral rules, but that central areas of moral concern cannot become the subject of anything like adequate public shared systematic discourse or enquiry".<sup>86</sup> If there is no conception of good or comprehensive doctrine which can be publicly justified, it appears that there is no conception of right is publicly justifiable as well. This is because the citizens have no commonly agreed resources which can be used to justify the conception of right.

Thus, it is crystal clear that even if the citizens are really capable of sharing the two principles of justice or respecting the political virtues in the political aspect, they cannot share the principles or respect the virtues independently of their own comprehensive doctrine or conception of good. But if they can only do so in the light of their own conceptions of good, it is seemingly that they cannot affirm the priority of right in the same way as Rawls does.

This leads to a predicament because "[f]or what we genuinely share in the way of moral maxims, precepts, and principles is insufficiently determinate to guide action and what

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<sup>86</sup> Ibid, p. 10.

is sufficiently determinate to guide action is not shared".<sup>87</sup> This tells us that those principles or moral rules which can be "shared by all" cannot be used to guide our action. Even if we accept certain moral conception, we will interpret it in various way. At last, it is our *own* conception of good which guides our action. We have no idea on how to lead a valuable life if appealing to the conception of right only. We have to rely on our own conception of good which is not commonly shared when we really want to achieve a valuable goal. This is why I deeply believe that if the good needs to be privatized, right cannot avoid privatizing too.

Hence, I agree that MacIntyre is right in pointing out a fatal problem of liberalism. It is a self-cheating point: Liberalism wants the citizens in a modern democratic society to affirm its moral rules in the political aspect on the one hand but admits that they need not affirm its conception of good (like those of autonomy) on the other. This is impossible since one cannot interpret the moral rules as worthy to affirm if not appealing to a conception of good. However, as the liberals assert all the time, there is no common agreement on one conception of good, not even though the liberal one. Thus, if one appeals to his own conception of good, there is no guarantee that he will accept the liberal moral rules in the same way as a liberal does. Only when one is holding a liberal conception of good is he able to affirm the moral rules set out by liberalism. Therefore, I believe that at last, only the liberals would find the privatization of good convincing.

All in all, if it is really hopeless for all reasonable citizens to affirm the same conception of good, then the affirmation of the priority of right, even though it is affirmed in the political aspect, is merely an illusion. And this is why Rawls fails to realize his ambition eventually.

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<sup>87</sup> Ibid, p. 6.



### iii. Schizophrenia

Besides, there is another reason for me to believe that the citizens cannot always respect the political virtues in case of conflict. Indeed, I think it is impossible for one to split his identity into two parts (political and non-political). Imagine if this is possible, what will such a person be?

As showed in the previous part, Rawls has not convincingly shown why the political virtues can always outweigh the non-political ones. Thus, he argues in vain for the priority of right because the virtue of reasonableness may not be able to outweigh our own conception of good in our daily life.

Moreover, even if Rawls can successfully argue for the priority of right, one should ask if it is really possible to achieve his demand. Can one really split himself into two parts, one being political in that he abides by the political conception of justice and puts deeply held comprehensive conviction into bracket, while the other being non-political in that he can freely pursue one's conception of good? Is it really reasonable and possible for one to distinguish between these two aspects and adopt two different attitudes towards the questions?

Here, one should bear in mind the relationship between the priority of right and the priority of public. I believe Galston is right in asserting that Rawls' priority of the right has been revised as the "priority of the public". As he points out:

If the teleological component Rawls's theory is so enhanced, then what of the much-discussed priority of the right over the good? The answer, I think, *is that the priority of the right is subtly reinterpreted as the priority of the public over the nonpublic*. That is, permissible conceptions of the good are delimited by the determination to give priority to social cooperation. Over and over again in his recent writings, Rawls repeats his hope that, taking as his point of departure the core concept of a fair system of cooperation, he can arrive at an expression of political values that 'normally

outweigh whatever other values may oppose them.”<sup>88</sup>

Galston clearly points out the difference between traditional liberalism and political liberalism. That is, the priority of right has been ‘reinterpreted’ as the priority of the public over the non-public. Now, the priority of right in political liberalism only demands the citizens to respect the political conception of justice in the political aspect while they can still freely pursue our conception of good in the non-political aspect. Thus, to say that Rawls is successful in arguing for the priority of right is equal to asserting that he is successful in arguing for the priority of the political aspect over the non-political one (as well as the possibility of their separation).

However, quite apparently, the basic question here is that, is it really possible for the “individuals to make sacrifices of their core commitments and of aspects of their character they regard as basic to their identity and integrity”<sup>89</sup> voluntarily when considering political questions? I believe that this requirement is unrealistic and unreasonable (I have shown why it is unreasonable in the previous parts. I am now discussing why it is unrealistic).

Can one really on one hand devote everything to his religion but on the other hand put his deeply held religious convictions into bracket when tackling political problems? For instance, there is a man who deeply believes that women are created by his God as the helpers of men. And thus, he believes that men has special ability and privileges which are not shared by the women. Can he really respect all citizens (especially women) as free and equal in a democratic society? Can he agree that all women share the same basic liberties as he does? His answer will obviously be ‘no’.

This tells us that to be a normal person, it appears to be impossible for one to hold some kind of comprehensive doctrine in his private life but abandon them in the political

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<sup>88</sup> “Pluralism and Social Unity”, p. 718, emphasize added.

<sup>89</sup> Ibid.



aspect. If one can really do that, he may suffer psychological pain. If Rawls wants to argue for the possibility of the split of our political and non-political identity, he must show in detail why a normal person can split his identity in a way described by him without having psychological problems.

But unfortunately, I cannot find his argument concerning this problem in *PL*. He seems to ignore this problem. I believe that this is because his idea of citizen only includes those who hold 'reasonable' doctrines. They are reasonable citizens in the sense that they endorse the fundamental ideas in the political conception of justice. Thus, there is no need to tackle the problem of conflict seriously because the political conception of justice is acceptable to them and being treated as compatible with different comprehensive doctrines (as he says, the conflicts are "much reduced").

However, since a modern democratic society is *pluralistic* in nature, Rawls must consider seriously the situation of those who hold comprehensive doctrines which are incompatible with the political conception of justice. He must take the charge of 'schizophrenia' into account. Indeed, some people like Dworkin think that Rawls' demand for the reasonable overlapping consensus is unrealistic simply because the citizens will be led to 'schizophrenia' finally. As he points out:

Liberalism apparently asks us to ignore instincts and attitudes on political occasions that are central to the rest of our lives. It insists that we distribute our concern with fine equality, that we care no more about a brother than a stranger, that we banish the special allegiances we all feel to family or specialized community or neighborhood or institution. It asks us to put our most profound and powerful convictions, about religious faith and moral virtue and how to live, to sleep. *Liberalism therefore seems a politics of ethical and moral schizophrenia*; it seems to ask us to become, in and for politics, people we cannot recognize as ourselves, special political creatures wholly different from ordinary people who decide for themselves, in their ordinary lives, what

to be and what to praise and whom they love.<sup>90</sup>

Rawls' theory asks the citizens to abandon their firmly held comprehensive convictions when settling basic political questions, it results in what Dworkin calls schizophrenia. To be an 'ordinary' person, can the citizens really achieve this special demand? Can a pious believer who wholeheartedly devotes everything to his religion puts his comprehensive doctrine to sleep when considering political questions? If he can really do this, I think one should doubt how 'pious' this man is.

Furthermore, even if this is possible, one should ask whether it is desirable. Is it really desirable to abandon the comprehensive convictions or put them to sleep in the political aspect? In order to answer this question, what values should one appeal to?

If one appeals to his own comprehensive doctrine, it seems that the answer is 'no'. If Rawls thinks that the answer is yes, he must show why people holding different conceptions of good should affirm his political conception of justice (the priority of right) in a way which is independent of any comprehensive doctrine (especially liberal one). And more importantly, he must also explain why they should suppress their own comprehensive doctrines for the political conception of justice. But as I have demonstrated earlier, Rawls fails to argue for these two points successfully. And thus, he gives us no convincing reason to believe that it is desirable to affirm the political conception of justice and suppress one's own comprehensive doctrines in the political aspect. This eventually makes me doubt if the reasonable overlapping consensus is really valuable to the citizens (especially non-liberals) in a democratic society.

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<sup>90</sup> *Foundations of Liberal Equality*, p. 15. Italics added.



#### iv. The impossibility of toleration as a political virtue

##### (i) Why should we tolerate?

In this part, I would like to focus on one of the political virtues which is the main reason of why the stability of a well-ordered society can be sustained, namely, the virtue of toleration. If the citizens in a democratic society do not accept the virtue of toleration, the overlapping consensus may at best be a mere *modus vivendi* and the realization of a well-ordered society is an illusion only.

Bear in mind that the three points discussed above are the reasons why the political virtues cannot override the comprehensive doctrine. They can explain why the virtue of toleration cannot win in case of conflict. I will further explore why the citizens, as a normal people, cannot respect the virtue of toleration on the one hand and yet hold a comprehensive doctrine which may conflict with it on the other.

Actually, toleration is an interesting concept. In ancient time, there is almost no discussion on toleration as a 'virtue' at all. One can find discussion on the virtue of courage or prudence, but one can hardly find a view which treats toleration as a virtue. This is because toleration itself is hard to be counted as something good in ancient time. When one tolerates, one is tolerating something that he does not agree with, usually something evil according to oneself. Ask yourself sincerely, how can a tolerant attitude towards a bad thing be treated as a virtue? This is a difficult concept because it involves ideas which are not compatible.<sup>91</sup>

Nevertheless, in today's democratic society, toleration is practised in many fields like those of race, sex, religion or education because of its pluralistic feature. If toleration cannot be practised in a large scale, it seems that the society's stability will be threatened. This is why toleration is treated as a virtue by many people (especially the liberals) nowadays. Without it, a pluralistic society seems unable to survive for such a long time.

Here, one can easily observe that in order to treat toleration as a virtue, there must be a presupposition, namely, something good can result from the practice of toleration, and this good thing is the stability of a democratic society.

However, why should the citizens accept stability as a good which can override their opinions or conceptions of good? If they affirm this due to their own comprehensive doctrines, does it mean that the political conception of justice involves some kinds of comprehensive doctrine again? Furthermore, even if they can affirm it in such a way, it seems that there is no reason why they cannot accept a *modus vivendi* since it can also be a stable society, though not stable in a right way according to Rawls.

Therefore, Rawls cannot argue for the toleration as a political virtue based on the good of stability alone. Instead, he has to show further that the principle of toleration, the “central component of the overlapping consensus” is somehow “intrinsically right”<sup>92</sup> which can be presented as independent of any comprehensive doctrine.

Actually, Rawls surely admits that the virtue of toleration is somehow intrinsically right and his admission does not depend on any one of the comprehensive doctrines. Indeed, according to him, the answer to why we should tolerate is due to the recognition of the burdens of judgment. However, one may still remember that even if we recognize the burdens of judgment, it does not entail that it is reasonable for us to tolerate. This recognition results in the reasonableness of toleration only when it is combined with the liberal ideas of person and society: because we are free and equal, though you do not agree with me (due to the burdens of judgment), I admit that I should not force you to accept my view.

In other words, if Rawls wants to argue that one should accept toleration as a political virtue, he must at first argue that one should accept the liberal ideas of person and society.

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<sup>91</sup> Please refer to Bernard Williams, “Toleration: An Impossible Virtue?” in *Toleration*.

<sup>92</sup> Jean Hampton, “Should Political Philosophy Be Done without Metaphysics?” in *The Liberalism-Communitarianism Debate*, p. 164.



But as I have shown, he fails to do so. Thus, it seems that he is unsuccessful in arguing that we should accept the principle of toleration as well.

Nonetheless, there may be another way which he can adopt. It is well known that traditional liberalism advocates toleration because of its devotion to the good of autonomy. In other words, the good of autonomy is the basis of toleration for liberalism in general. And of course, Rawls shares this view too, though the autonomy for him is political in nature.

For a liberal, one should treat autonomy as good because people have the right to decide their own ways of life independently of external force. The necessary condition for a valuable life is to freely choose one's own way to live. In order to achieve this, one should tolerate and respect others' choice of their own comprehensive doctrines. If one does not tolerate those who holds incompatible comprehensive doctrines with him (perhaps he uses force to ban some people from choosing some kinds of comprehensive doctrines), it is obvious that he has violated their autonomy and this is unacceptable to a traditional liberal.

Rawls' idea of autonomy differs from the traditional one because he has to try his best to avoid comprehensive elements. His idea of autonomy is political:

This values (of autonomy) may take at least two forms. One is political autonomy, the legal independence and assured political integrity of citizens and their sharing with other citizens equally in the exercise of political power. The other form is moral autonomy expressed in a certain mode of life and reflection that critically examines our deepest ends and ideals, as in Mill's ideal of individuality, or by following as best one can Kant's doctrine of autonomy. While autonomy as a moral value has an importance place in the history of democratic thought, it fails to satisfy the criterion of reciprocity required of reasonable political principles and cannot be part of a political conception. Many citizens of faith reject moral autonomy as part of their way of life. (PL, pp. xlv-xli, parenthesis added)

Because many “citizens of faith reject moral autonomy as part of their way of life”, Rawls changes his standpoint and tries to assert the good of autonomy in the political aspect only. With the intention of realizing the political autonomy, one should respect and tolerate others as equal (share political power) and free (legal independence) as himself. Thus, people should not force others to affirm their views in the political aspect.

Unluckily, it is easy to observe from this passage that, at last, if Rawls bases the principle of toleration on political autonomy, he must argue for the reasonableness in accepting the liberal ideas of person as *free* and *equal* as well. Thus, once again, the road is blocked. Nevertheless, I will show in the following that even if one accepts the principle of toleration because of the good of autonomy, one may not be able to tolerate in many situation.

(ii) The virtue of toleration?

Before we proceed, we should first clarify the meaning of “toleration as a virtue”. What is it exactly?

One should bear in mind that this virtue is neither indifference nor compromise.<sup>93</sup> It is not indifference because if one is indifferent to comprehensive doctrines, he needs not tolerate them at all because he does not care which doctrine is true. If toleration is needed, there must be something one cannot agree with. This is why Horton thinks that the main theme of liberalism, namely, the principle of neutrality, somehow makes the term ‘toleration’ lose its real meaning because there is no need for toleration if it can really be neutral to different doctrines:

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<sup>93</sup> For details, please refer to the introduction (by David Heyd) in *Toleration*.



If it is only possible to be tolerant toward what is in some respect negatively valued, the very capaciousness of liberal neutrality could present conceptual difficulties to characterizing it as tolerant. Whereas the first charge against liberalism was that it is less tolerant than it pretends because it is less permissive, the second charge is that it is less tolerant (though not therefore intolerant) precisely because it is so permissive. These charges are to some extent directed at different forms of liberalism, but, taken together, they suggest that it might be surprisingly difficult to vindicate liberalism's claims to be especially *tolerant*: liberalism inclines toward either intolerance or indifference.<sup>94</sup>

Although Horton thinks that "liberalism inclines toward either intolerance or indifference", Rawls holds both the principles of neutrality and toleration at the same time. Indeed, Rawls does not think the overlapping consensus is indifferent because if it is so, it will make the political conception of justice contradict some comprehensive doctrines.<sup>95</sup> For him, the principle of neutrality is somehow different from indifference and thus, it is compatible with the principle of toleration.

Secondly, the virtue of toleration is not a compromise either. As I have said in (I), Rawls thinks that a society sustained by a compromise is merely a *modus vivendi*. This is not the society he wants. He wants people to practise toleration on the ground of virtue rather than practical considerations.

Apart from these two points, we should clarify the degree of the toleration too.<sup>96</sup> In our common usage of the term 'toleration', the degree is vague and thus, no clear-cut line can be drawn. When facing other attitudes which we find offensive, what action we take should be counted as tolerant?

Of course, avoiding the use of force is the typical case of toleration. However, is this a full account of it? It seems that toleration is more than this. In fact, in our everyday use, it has

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<sup>94</sup> John Horton, "Toleration as a Virtue" in *Toleration*, p. 36.

<sup>95</sup> *PL*, pp. 150-154.

<sup>96</sup> Toleration is often a matter of degree. Please refer to "Toleration as a virtue" in *Toleration*, p. 28.

various meanings. The vagueness of the term explains why there is always disagreement in what should be counted as toleration.<sup>97</sup>

Hence, it is better for us to simply adopt the degree of the toleration according to Rawls. That is, broadly speaking (not restrict to political aspect only), one is tolerant provided that he does not use force to make others agree with him or restrict them from doing something he does not agree with.<sup>98</sup>

Now, let us come to the question of whether it is reasonable and possible to tolerate. As I have mentioned, the concept of “toleration as a virtue” is quite special. Some may doubt if we can base the practice of toleration *mainly* or *necessarily* on this virtue. As Bernard Williams says:

A tolerant attitude (towards this group) is any disposition or outlook that encourages them to do so...One possible basis of such an attitude – but only one- is a virtue of toleration, which emphasises the moral good involved in putting up with beliefs one finds offensive. I am going to suggest that this virtue...limits the range of people who can possess it. Because of this, it is a serious mistake to think that this virtue is the only, or perhaps the most important, attitude on which to ground practices of toleration.<sup>99</sup>

Williams thinks that though one can tolerate on the ground of virtue, this is not *necessary* since there are many other views that may result in the practice of toleration too (like Hobbesian view or skepticism). Moreover, toleration as a virtue demands people to accept wholeheartedly some things which they may treat as thoroughly bad. This limits the

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<sup>97</sup> “Toleration as a virtue” is a paper demonstrating very well the debate between different philosophers on the meaning of ‘toleration’.

<sup>98</sup> Here, the term ‘force’ of course is vague. It cannot cover all cases of toleration. For example, if a mother restricts her son from making friends with a girl by not giving him money, it is unclear that this should be counted as intolerance. In this case, maybe most of us will think that the mother is not a tolerant person. However, for simplicity, I just focus on the most obvious case in this thesis, that is, the use of force. This is because if it is not reasonable to tolerate in such obvious cases, then, toleration is surely not reasonable in other moderate cases.

<sup>99</sup> “Toleration: An Impossible Virtue?” in *Toleration*, p. 19.



range of people who can practise this virtue because there may be some who do not accept autonomy as good at all. This shows us why the practice of toleration cannot *mainly* be grounded on the virtue. As he says:

If toleration as a practice is to be defended in terms of its being a value, then it will have to appeal to substantive opinions about the good, in particular the good of individual autonomy, and these opinions will extend to the value and the meaning of personal characteristics and virtues associated with toleration, just as they will to the political activities of imposing or refusing to impose various substantive outlooks. This is not to say that the substantive values of individual autonomy are misguided or baseless. The point is that these values, like others, *may be rejected*, and to the extent that toleration rests on those values, then toleration will also be rejected. The practice of toleration cannot be based on a value such as individual autonomy and also hope to escape from substantive disagreements about the good. This really is a contradiction, because it is only a substantive view of goods such as autonomy that could yield the value that is expressed by the practices of toleration.<sup>100</sup>

From this passage, one can see that, for him, it is quite impossible to reject the good of autonomy on the one hand but exercise the virtue of toleration on the other hand. If one can exercise this virtue, one must assert the moral value of toleration through the assertion of the good of autonomy at the very beginning. However, since there is no hope for all to hold the good of autonomy (as asserted by liberals, there is no hope for universal affirmation of any particular conception of good), it seems that it is impossible to practise the virtue of toleration in a large scale in a pluralistic democratic society because not all citizens recognize the good of autonomy.

But as I have said above, with the purpose of avoiding the affirmation of the liberal comprehensive doctrine, Rawls changes the nature of autonomy to political. Nonetheless, I

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<sup>100</sup> Ibid, pp. 24-25, italics added.

have also shown that this does not work, and so Rawls cannot impose a moral responsibility on the citizens to accept the principle of toleration.

Furthermore, I believe that even if one can affirm the good of political autonomy, one may not agree that it is possible to tolerate all the time in the political aspect. This is because even for those who affirm the good of autonomy, it may not be possible for them to affirm it as the highest good.<sup>101</sup> For instance, to be a normal person, it is quite impossible for us to accept that the life of a drug addict is a valuable one even though it is freely chosen by a mature adult. In the same way, even if a Dad accepts that it is good for his children to choose his own way to live, he may not be able to tolerate a homosexual behaviour which is chosen by his children.

This is why there are laws in a democratic society which are used to ban some kinds of action which are morally unacceptable to the majority even though they do not violate the harm principle. Indeed, paternalism has never disappeared in human history because people do not accept that autonomy is really the highest good for human beings. This shows us one thing that, even if autonomy is accepted as something good, the choices must to some extent be limited by some acceptable conceptions of good. If this is not the case, force may be used.

Thus, if one holds a conception of good which is not acceptable to the others who affirm the good of autonomy, the latter may also not be able to tolerate even though he affirms autonomy as good. This is why I doubt if the good of autonomy can be the highest good to a liberal. If I am right, even if the good of autonomy is held by majority, it is hard to argue for the practice of toleration in large scale based on the autonomy (no matter moral or political). This is because although some can hold it as good, they may not hold it as the highest good at all.

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<sup>101</sup> This idea in fact is inspired by Mr. Chow Po Chung.



Apart from that, one can easily observe that the impossibility of toleration as a virtue is especially obvious in the religious aspect. Although there may be some moderate religions like Buddhism which are relatively easier to practise toleration, there are indeed many religions which are hard to do so.

In many revealed religions, their members believe that they are the only people who hold the truth. If others do not recognize this, they are evil. Moreover, they may also think that to tolerate a wrong or fake 'truth' is evil too. Error indeed is intolerable in many religions. As Avishai Margalit says:

Suppose we have a crystal ball that tells us medical truths and suggests treatments methods. If the goal is curing people, an error in treatment resulting from not relying on the crystal ball would be a foolish act that should not be respected from any point of view. If, on the other hand, it is scientific medicine that is in question, then error in theory or treatment could still be considered rational...When truth is given by revelation, or when medicine is a crystal-ball practice, errors are not a constitutive element in attaining truth, Errors have no value, and when they occur in a way of life, or in medical treatment, they become sins.<sup>102</sup>

This passage show us an extremely important point. In religion, there is no room for errors or elements which are incompatible with the religion itself. Religion is different from science or academic research. If one really believes in the revelations of his religion, how can he accept that the revelation may be wrong? It is 'faith' but not 'belief' which is required in religion. If errors occur in a way of life of a religious believer, they become sins.

Thus, if a religion tells its believers that it is better for one to die if he does not accept its salvation (remember militant Islam), how can the believers endorse the political conception of justice as well as the principle of toleration even though it is only used in the

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<sup>102</sup> See Avishai Margalit, "The Ring: On Religious Pluralism" in *Toleration*, p. 156.

political aspect? How can they tolerate the 'evils' around them especially when their family or someone they love are involved?

Owing to this, I want to claim that if one has held no religious doctrine, he may accept or be affected by the norms or the prevailing ideas in a society much more easily. Nevertheless, when one is endorsing some kind of religion and the political virtues conflict with his religious beliefs, it is far from being true that the non-political value will normally be outweighed by the political virtues, though they are essential to the fair social-condition. Moreover, force may be needed in destroying the 'evil' in this world and this may appear as quite reasonable for those who really believe in such a religion.<sup>103</sup>

As Sandel rightly asks, "What guarantees that no moral or religious doctrine can generate interests sufficiently compelling to burst the brackets, so to speak, and morally outweigh the practical interest in social cooperation?"<sup>104</sup> It is too optimistic if not unreasonable to claim that the political virtues may normally win whenever conflicts occur. At last, Rawls can at best assert unreasonably that those who do not accept his political conception of justice are unreasonable.

Maybe he can still insist that it is possible for the virtue of toleration to be practised only on the political aspect but not the private life which seems much easier to achieve. This view is also held by many people. As Scanlon tells us that there may be someone who holds this view:

Even though we disagree, they are as fully members of society as I am. They are as entitled as I am to the protections of the laws, as entitled as I am to live as they choose

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<sup>103</sup> I want to mention that I have watched a TV program in which a Palestinian Bomber who bombed a crowded place in Israel has been interviewed. Many Israelis have been killed in the blast. However, he showed no feeling of regret even though the interviewer told him that there were many women and children being killed. This is because he believed that his religion called him to do so and he could enter heaven even though he would die in such an event. This really shocked me. I of course believe that he is wrong and unreasonable. But I do not think that he can be convinced by us because of his deep devotion to his religion.

<sup>104</sup> Michael J. Sandel, *Democracy's Discontent* (Cambridge; Massachusetts: Harvard University Press, 1996), p. 19.



to live. In addition (and this is the hard part) neither their way of living nor mine is uniquely *the* way of our society. These are merely two among the potentially many different outlooks that our society can include, each of which is equally entitled to be expressed in living as one mode of life that others can adopt. If one view is at any moment numerically or culturally predominant, this should be determined by, and dependent on, the accumulated choices of individual members of the society at large.<sup>105</sup>

This is a typical view held by the one who admits that we should tolerate. How can we achieve this? For a religious believer, it is quite unreasonable and impossible to do so. However, some people like Heyd think that we can do this if we hold a special attitude on the virtue of toleration. That is, when we consider whether we should tolerate him, we should treat the person (who holds a different doctrine from us) and his view separately. If we can really do this, although we may to a large extent disagree with one's opinions, we can tolerate him. It is because he is as equal and free as us no matter what his view is. This special nature of toleration is called "perceptual virtue" by Heyd. This is due to the shifting of the perception of toleration:

The conception I wish to outline can be called "perceptual." It treats toleration as involving a perceptual shift: from beliefs to the subject holding them, or from actions to their agent... The virtue of tolerance consists in a switch of perspective, a transformation of attitude, based not on the assessment of which reasons are overriding but on ignoring one type of reason altogether by focusing on the other. Thus, to be tolerant one must be able to suspend one's judgment of the object, to turn one's view away from it, to treat it as irrelevant, for the sake of a generically different perspective. It is a kind of Gestalt switch, which like the rabbit-duck case, involves on the one hand a choice, sometimes an intentional effort, and on the other hand an "image" that is always exclusive of its competing image at any given time.<sup>106</sup>

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<sup>105</sup> T. M. Scanlon, "The Difficulty of Tolerance" in *Toleration*, p. 231.

<sup>106</sup> "Introduction" in *Toleration*, p. 11.

I agree with Heyd in pointing out the necessary condition for toleration to be a virtue. That is, we can have the virtue of toleration only when we can treat the dissident separately from their views. But I don't agree that as a normal person, we can achieve what he says. Can we really separate a person from the views he holds in such a way? I believe this is possible only when we do not care about opinions of others, i.e. when they do not affect us or those we care. If it is not the case, it is quite impossible and unreasonable for us to hold a perceptual virtue of toleration.

We can hold toleration in the case of Gestalt switch or rabbit-duck picture just because we do not care what exactly they are. The results have no effect on us. But it is extremely unlikely that we can tolerate our son from taking drug or our own religious doctrines being violated. This is because we believe what we hold is true. When others' wrong opinions affect us or the ones we love, it is reasonably unacceptable. And we would not hesitate in using force to stop it from happening.

Moreover, our situation in a society also makes the perceptual virtue of toleration difficult to realize. We are normal human beings, we have relationships with others in a society. When we make friends with someone, we are not making friends with an unencumbered self. We cannot simply treat him and his views separately. We accept his ideas, comprehensive doctrine, goals, personality, which *form* a whole unity. If we can make friends with a bare 'self' which contains none of the above, it is far from clear what our 'friend' really is. Even though we can do so, I doubt if it is worthy.

Indeed, living in a society, we want to seek recognition from others. We hope others enjoy what we enjoy, like what we like. Usually, the reason of intolerance is not that we are holding special religious doctrine or we have the desire to dictate others. Instead, it may be because we discover that our society has some popular ideas which are unacceptable to us, or



we find out that we share no common value with others. We like to live in a society in which people share more or less the same interests or habits. As T. M. Scanlon rightly points out:

We all have a profound interest in how prevailing customs and practices evolve. Certainly, I myself have such an interest, and I do not care whether other people, individually, go swimming in the nude or not, but I do not want my society to become one in which nude bathing becomes so much the norm that I cannot wear a suit without attracting stares and feeling embarrassed. I have no dictate what others, individually, in couples or in groups, do in their bedrooms, but I would much prefer to live in a society in which sexuality and sexual attractiveness, of whatever kind, was given less importance than it is in our society today. I do not care what others read and listen to, but I would like my society to be one in which there are at least a significant number of people who know and admire the same literature and music that I do, so that that music will be generally available, and so that there will be others to share my sense of its values.<sup>107</sup>

Thus, I may not be able to tolerate if my society is a place where nude bathing becomes social norm or sexuality has great significance. Even if I am not a devout believer, I cannot tolerate some tastes or habits which I feel unacceptable. Moreover, I hope I can share my values with others without feeling embarrassing or strange. I hope my interests and tastes can be enjoyed by others too. This is our real situation and it is exactly why we may not tolerate even though we are not religious believers.

One should bear in mind that I did not claim there is no virtue of toleration in religion. I just doubt whether it is common enough to sustain a well-ordered society. Similar to Bernard Williams, I doubt if the practice of toleration can mainly be based on this virtue (especially in the religious aspect). Even if some are willing to tolerate conflicting views, it may be a compromise only.

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<sup>107</sup> T. M. Scanlon, "The Difficulty of Tolerance" in *Toleration*, p. 230.

If it is not a compromise, it is worth doubting whether they really have faith in their religions. In fact, I believe that the reason for toleration among today's religions is just because of the lack of power to overcome others without sacrifice.<sup>108</sup> I also doubt if this situation will change in the foreseeable future.

If the practice of toleration cannot be based mainly on this virtue, whether the overlapping consensus can be achieved or the stability of a well-ordered society can be sustained is extremely doubtful. In fact, it may merely be a *modus vivendi* only. The citizens tolerate just because no one has an absolute power which can make others obey oneself without serious sacrifice.

Perhaps someone will object to my view with examples of today's religious toleration. For instance, recently, in Northern Ireland, there seems to be hope of peace because Britain agrees to grant semi-independence to them. It appears that they can tolerate each other because most of them detested non-ending violence.

However, is this really toleration based on the virtue of toleration? Or is it true that it can be sustained in the future if the balance of the power disappears? I doubt it very much. Indeed, if the Christians in Britain can control Northern Ireland without sacrifice (or vice versa), I am afraid that they will not hesitate in doing so. And the most important thing is that they may consider it to be reasonable.

This shows us one fact. The stability of a democratic society can be sustained only if no power is great enough to be dominant in such a pluralistic society. This may be due to the weakness of human nature. Such a fact, however, cannot be denied simply by superficial observation of the apparently harmony of the recent situation.

Because of the above discussions, I want to declare that Rawls' work is far from being satisfactory in arguing for the possibility and stability (which is based on the political virtue)

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<sup>108</sup> For the discussion of these points, please refer to Shih Yuan Kang, *Contemporary Liberalism*, pp. 174-175.



of a well-ordered society because the overlapping consensus is not realizable. He is too optimistic and unreasonable when telling us about the nature of a well-ordered society. Thus, at last, it can at best be an illusory fantasy of a modern liberal.

## Conclusion

As I have discussed in Introduction, Rawls wants to work out a political conception of justice which can be endorsed by all reasonable citizens in a modern democratic society where the reasonable pluralism is an inevitable feature. For him, this endorsement is possible through the reasonable overlapping consensus. If such a consensus is realized, the well-ordered society which is regulated by the political conception of justice will be just and stable. This means that the task set by Rawls himself is fulfilled and the social unity of a well-ordered society is secured.

In this thesis, I have argued that Rawls fails to realize his ambition. His failure is due to two reasons. First of all, he is not convincing in imposing a moral obligation on the citizens to affirm his political conception of justice. Secondly, he is unreasonable and too optimistic to claim that the citizens who hold different comprehensive doctrines can endorse such a political conception.

He is unreasonable because he does not take the effect of the burdens of judgment (which are suggested by himself) into account seriously when claiming that all reasonable citizens can affirm his political conception of justice. Furthermore, he is not convincing in showing that his political conception is freestanding.

He is too optimistic in that he declares the political virtues have the outweighing power when conflicting with the non-political values. I have argued that this is not the case. Moreover, since the possibility and stability of a well-ordered society depend heavily on the political virtue of toleration, this makes its realization an illusion because, as I have shown, toleration cannot be practised mainly on the ground of virtue. Indeed, toleration is difficult to be treated as a virtue for those who endorse their own religious doctrine since there is no room for it in many religions.



If I am right, Rawls' political liberalism is unsuccessful because it fails to provide any realistic solution to the question it is supposed to answer. As I have mentioned, in the end, a well-ordered society can at best be a *modus vivendi* only.

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